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U.S.--FEDERAL COMMUNI-  
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MOTION OF THE GENERAL  
COUNSEL TO EXPUNGE AS  
SCANDALOUS, SCURRILOUS,  
SHAM AND...







Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington 25, D. C.

In re Applications of	)	
KMPC, THE STATION OF THE STARS, INC.	)	DOCKET NO. 9468
Los Angeles, California	)	FILE NO. BR-18
WJR, THE GOODWILL STATION, INC.	)	DOCKET NO. 9469
Detroit, Michigan	)	FILE NO. BR-331
WGAR BROADCASTING COMPANY	)	DOCKET NO. 9405
Cleveland, Ohio	)	FILE NO. BR-283
For Renewal of License	)	

MOTION OF THE GENERAL COUNSEL TO EXPUNGE AS  
SCANDALOUS, SCURRILOUS, SHAM AND FRIVOLOUS  
THE "MEMORANDUM IN SUPPORT OF APPLICANT'S  
MOTION TO STRIKE FROM THE RECORD ANY AND ALL  
EVIDENCE RELATING TO NEWSCASTS ALLEGED TO  
HAVE BEEN BROADCAST OVER RADIO STATION KMPC  
BETWEEN JULY 1942 AND SEPTEMBER 29, 1947,  
AND FOR OTHER RELIEF".

Benedict P. Cottone  
General Counsel

Frederick W. Ford  
Counsel

Thomas H. Donahue  
Counsel

Federal Communications Commission







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## MOTION TO EXPUNGE

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PRELIMINARY STATEMENT

1. The present motion is addressed to a document filed by applicants' counsel in the above entitled proceedings which bears the following title:

"Memorandum in support of applicants' motion to strike from the record any and all evidence relating to newscasts alleged to have been broadcast over Radio Station KMPC between July 1, 1942 and September 29, 1947, and for other relief."

2. The foregoing document (which will hereinafter be referred to as the "Memorandum") is a printed document of 185 pages (both sides) filed by applicants' counsel on November 21, 1950, following a recess which was taken in the proceedings upon the conclusion of the Los Angeles phase of the hearings on October 19, 1950. The motion which the Memorandum purports to support is the same motion which had been made on the record by Mr. Hugh Fulton, counsel for the applicants, on October 18, 1950. At that time, after hearing all the evidence upon the basis of which the Motion to Strike was made, the Examiner denied the motion (T. 14570). Following this denial Mr. Fulton stated that he would present to the Examiner "probably in the opening of the Detroit hearing, the formal renewal of the motion with the memorandum of authorities" (T. 14571).

3. The Motion to Strike was predicated at that time, as it later was in applicants' Memorandum Brief, upon charges of suppression, concealment, and authorization of destruction, by the Commission's staff, of certain alleged primary evidence, consisting of recordings, made by a commercial organization known as "Radio

Reports, Inc.", of KMPC newscasts during the period between July 1942 and September 29, 1947. All of the alleged factual bases in support of the motion were found by the Examiner at the time that the Motion to Strike was originally made in Los Angeles to be entirely without basis. The day following the Examiner's action denying applicants' Motion to Strike and after Mr. Fulton had completed the presentation of all his evidence on this matter, Commission counsel pointed out to the Examiner the obviously untrue nature of Mr. Fulton's allegations of "destruction, suppression and concealment" as was apparent from the evidence that Mr. Fulton himself presented. Also, the malicious purposes behind the making of these assertions were pointed out to the Examiner. When Mrs. Timmons, the witness whose testimony Mr. Fulton expected to rely upon, was initially brought to the stand, a number of newspaper people were present who had not theretofore been regularly covering the hearing. In view of the close gearing of the applicants' publicity machine with the activities of its counsel, the presence of that group of newspaper men on that particular day was significant <sup>1/</sup>.

4. Commission counsel requested the Examiner (T.14762) to direct Mr. Fulton to retract his "libelous and malicious assertions". Thereupon the Examiner made the following statement:

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<sup>1/</sup>The charges hurled by Mr. Fulton were reported in certain publications in a manner tremendously injurious to the Commission personnel involved.



"The Presiding Officer: There is a suggestion, Mr. Fulton, that the Commission, the Federal Communications Commission, has deliberately and wilfully and wrongfully concealed and suppressed certain material evidence. Now, as counsel pointed out, I have noted it in the record and noted it in the press. I heard all the testimony of Mrs. Timmons yesterday and I examined the exhibits carefully last night and again this morning, and I find nothing in this record in the way of testimony or physical evidence of any kind which would suggest even remotely that the Commission or the staff have, with any design, concealed any material, suppressed or destroyed any material evidence which would be useful for the applicant in presenting his case.

It seems to me that that is quite a serious charge, Mr. Fulton —

Mr. Fulton: Yes.

The Presiding Officer: If I may finish for the record, please. — to direct toward an agency such as the Federal Communications Commission or any other Federal agency. I know the Communications Commission because I have been with it since the time it was created. I was rather shocked, but I thought over the implications of the charge that the Commission, the Federal Communications Commission, had done any such monstrous thing as was suggested in the press, and gathered from the statement of counsel upon the record.

I am not deceived, Mr. Fulton, at all. I am not deceived with the charge of Communism being the basis of this proceeding, nor am I deceived by charges such as appear here that the evidence has been destroyed or suppressed, distorted in some way. There is no evidence of that.

I think the charge is completely unfounded. I don't know what Mrs. Timmons will testify to today, but thus far I am afraid I must agree with counsel for the Commission —

Mr. Fulton: Well, Mr. Examiner —

The Presiding Officer: -- that the charge is improper, and I strike it from the record at this time." (T. 14762-14764)

5. It will be shown in the instant motion of the General Counsel that the assertions in applicants' Memorandum Brief are false and grossly deceitful, and that the entire Memorandum Brief should be expunged as scandalous and scurrilous. It will be shown moreover that applicants' Motion to Strike and their Memorandum Brief in support thereof are sham and frivolous in view of the fact that the charges made therein had no connection with the substantive issues of the proceedings; that applicants' counsel never has had any interest in the Radio Reports material for any legitimate evidentiary purposes.

6. The conduct and purposes of applicants' counsel in respect to the Radio Reports incident should be considered in the light of the kind of conduct applicants' counsel engaged in throughout these proceedings. From the very beginning, Messrs. Fulton and Burns engaged in tactics clearly intended to accomplish the following:

- (1) To divert the proceedings away from the actual substantive issues involved to issues relating to the motives of particular personalities, including not only members of the Commission, the Commission's staff but also witnesses testifying for the Commission.

- (2) To create a public misapprehension of the real issues in the proceedings, by statements and



conduct designed to create the false impression that the issues related to Mr. Richards' personal political and other views.

(3) To create by such conduct a completely false impression of a determination by the Commission and the Commission staff to "persecute" Mr. Richards merely because he had views which were anti-Communistic and anti-Administration.

(4) To create by sly innuendo a similar false impression that the Commission and its staff had Communistic or subversive inclinations.

(5) To create completely false impressions that the Commission's staff had a great amount of information which was favorable to Mr. Richards, but which, by deliberate design, the staff sought in every way possible to suppress.

7. It would require extensive citation to the record to show the extent of the reprehensible tactics employed by applicants' counsel to accomplish the foregoing objectives. The matter is one which is very pertinent since the story of their misconduct shows an abuse of the Commission's processes which is without precedent in the annals of the Commission. While at this point, their general misconduct is of significance as showing the relationship of the Radio Reports incident to the carefully calculated pattern established by applicants' counsel for their general handling of

applicants' case, it must not be overlooked that we have here perhaps separate questions, but nevertheless serious ones, of the preservation of the integrity of the Commission's processes, and the prevention of misuse and abuse of those processes by those who have been accorded the privilege of practicing before the Commission and who seek to continue to exercise that privilege.

8. A campaign of vilification was begun almost before the ink was dry on the appearance filed in these proceedings by the firm of Fulton, Walter, and Halley. The first public statement by Mr. Fulton, given at the opening of the hearing before Examiner Johnson, was a speech delivered in the guise of an "opening statement" which consumed several hours in the reading, and which was not really an opening statement in any sense in which lawyers understand the term, but a publicity release designed for widespread circulation. In this statement, Mr. Fulton completely distorted the issues designated by the Commission, and made a clearly unwarranted attack upon the motives of the Commission, the staff, and other personalities in respect to the institution of the proceedings against Mr. Richards. This statement, printed and given wide circulation by the applicants in the form of a pamphlet entitled "It May Happen Here" (FCC Ex. No. 430), became one of a series of similar documents put out by applicants' propaganda machine. This series of documents, was all in the same vein of conveying false impressions that the proceedings were only designed to "persecute"



Mr. Richards for his patriotic, anti-Communistic, anti-Democratic, pro-Republican personal views. This activity was going on in open and flagrant contempt of the Examiners (both Johnson and Cunningham) who were conscientiously doing everything possible to conduct the proceedings in a judicial manner. A particularly vicious public statement was issued by applicants' counsel immediately upon the close of the proceedings before Examiner Johnson in April of 1950. The record shows how some of applicants' propaganda publications, one of which had the colorful title "Penalty for Patriotism" (FCC Ex. 290), had been fed to the prospective "reputation" witnesses of the applicants prior to their appearance on the stand (T. 10644 - 10645, 10678 and 10679), and how in some instances, those witnesses were provided with the questions and answers of previous witnesses with the obvious purpose of conveying to them the line which their answers to the questions of applicants' counsel and Commission counsel should take (T. 9304, 10101). The record will show how applicants' counsel would enter into stipulations one minute and then, contrary to every recognizable principle of ethics, later turn their back on their own agreement (T. 1182). The record will show how applicants' counsel, knowing that particular evidence was incompetent, immaterial, or irrelevant and clearly inadmissible, would be brought forth with the obvious purpose of creating inferences unfavorable to the Commission, its staff and Commission witnesses (T. 6901). Not the least of these efforts was apparent in the instances in which

applicants' counsel sought to introduce clearly incompetent items from allegedly Communistic newspapers (FCC Ex. 120, T. 6843). And, finally, the record will show the completely defiant and arrogant refusal of applicants' counsel, Mr. Fulton, to abide by the canons of professional ethics even after the pertinent provisions of those canons were read into the record. The question of extra-record comments and argument by counsel upon the merits of the proceedings came up shortly before the termination of the proceedings in Los Angeles in October of 1950 in connection with the intention of applicants' counsel to issue a statement to the press discussing the merits of the case upon the conclusion of the Los Angeles phase of the hearings. At that time, the Examiner stated:

"I indicated once, as I recall, that we should confine this case to the four corners of the courtroom here, and we shouldn't try it outside. If there are statements which counsel desires to make, which he considers pertinent to the proceeding, I think in fairness to me as the Examiner they should be made to me and on the record. I am sure that counsel for the applicant will adhere to that." (T. 14108)

Mr. Fulton's attitude with respect to the question of publicly arguing the merits of his case outside the confines of the record is indicated in the following language:

"But I wish to make it clear that I feel that I have a right in this country to talk to anybody --

\* \* \* \*

-- about this case, and I will do so, and will say to them whatever I consider appropriate, whether Mr. Cottone in turn likes it or not..." (T. 14110-14111)

9. On the very next day there was read into the record, at page 14572, the provisions of paragraph 20 of the canons of professional ethics which condemns the practice of publication by lawyers of ex parte statements with respect to the merits of a pending proceeding.

10. In open, defiant, and arrogant disregard of the statement made by the Examiner and of the principles in the code of ethics, Mr. Fulton, a few days after the close of the proceedings in Los Angeles, issued an argumentative public statement, very much in the vein of a public statement previously issued at the close of the hearings before Examiner Johnson. In this statement, Mr. Fulton described his version of the facts in the proceedings and again indulged in attacks upon the credibility of the Commission's witnesses and the integrity of the Commission's staff.

11. In illustration of the type of conduct engaged in by applicants' counsel, it is of interest to point out the remarks made by the Examiner on a number of occasions admonishing applicants' counsel with respect to their tactics.

12. Thus, on October 10, 1950, the Examiner said to Mr. Fulton:

"There is nothing factual in this record to suggest that, sir. I pointed that out last July. I admonish counsel that if there is something factual and you would have your witnesses testify to it, the Commission would be glad to receive it." (T. 13046)

1 The reference was to a series of unsupported conclusions, stated on the stand by a witness for the applicants, to the effect that the proceedings were "Communist-inspired."



13. On October 17, 1950, the day before Mr. Fulton first made his accusations against the Commission staff in regard to the Radio Reports matter, the Examiner said:

"The Presiding Officer: It may be premature because I originally planned to cover it in my initial decision. But from the very beginning of the hearing, that is, during the time I have been identified with it, there has been a suggestion and assertion here and there that the Communist Party, some Communist sympathizers are in some way identified with the charges that were originally made to the Commission against Mr. Richards and his stations, that they may be in some way identified with this proceeding as such.

Now, we have a record at the moment of in excess of 14,000 pages. I have been listening very attentively to all of the witnesses. I haven't seen or heard a single solitary fact, not a scintilla of evidence which would suggest to me even remotely that any Communist people or any Communist organization are in any way connected with this proceeding.

I have reached the point where I am inclined to question the sincerity of the assertion and suggestion. It has absolutely no basis in fact whatever from my personal knowledge of the Commission and the Commissioners and the Commission staff, as well as from the record of the proceeding which we have made thus far of nearly 15,000 pages.

At one stage of the case I admonished Mr. Burns, who filed a document in which he stated -- I have forgotten his exact words -- that some action taken by counsel for the Commission was designed to cover the fact that the charges in this whole case were Communist inspired, or that Communist sympathizers were behind it. I thought the charge was scandalous and scurrilous and I so stated. I admonished counsel not to repeat it, and he hasn't done so.

Now, some of the witnesses offered testimony to the effect that Communism in some way is involved here. I struck that testimony, or most of it, and if I didn't strike it then I strike it now and I want the record to show that.

I am satisfied from the testimony of the witnesses presented by the Commission that the charges made were substantial ones, and I find that there is no foundation for the suggestion of Communism here at all with reference to their testimony or any of the exhibits offered in connection with their testimony.

Now, why it was done I don't know. I do know that I am not easily deceived and that I haven't been deceived in any way by statements and assertions and the innuendo with reference to the subject.

On the record these charges that were made, the basis of the Commission's issues were substantial. I think those charges should be met with concrete evidence and not with a series of assertions unsupported by fact that Communism or some sinister group is behind this whole proceeding. I am not deceived by that sort of thing, gentlemen. I haven't been. I have waited patiently for something factual that might be presented here in support of the assertions. There have been no facts. None are available. I am satisfied of that.

So I will have to admonish counsel that henceforth the assertions in this regard must stop. I will not have any more of them on the record. I will interrupt counsel, I will interrupt the witnesses, if they attempt to make them hereafter.  
... " (T. 14063-14065)

14. In a particular instance involving the testimony of Thomas C. Latimer, a Commission witness, Mr. Fulton had attacked Latimer by suggesting that he was a Communist or a Communist sympathizer. The witness under cross examination made a long statement, stating in part:

"Your Honor, am I on trial or is Mr. Richards on trial? I think my record stands. I have no Communist leanings whatsoever. I am not sympathetic with the Communist cause whatsoever, and never

have been, and seriously object to any implication by Mr. Fulton that I have had." (T. 2624-2625)

And the Examiner after the witness was excused felt impelled to make this statement to clear the record:

"The Presiding Officer: I would like to make a statement first, if I may, gentlemen, with regard to the previous witness.

As a matter of fairness and decency, I am aware of nothing in the record which he testified to, either on direct or cross, which would have required that he defend himself as an American. Let that appear on the record." (T. 2635)



BACKGROUND FACTS

15. In March, 1948, the Commission received a complaint and affidavits from the Radio News Club concerning instructions to distort the news by Mr. G. A. Richards, principal stockholder of Station KMPC. An investigation was conducted by the Commission in Los Angeles in April, 1948, in the course of which officials of KMPC advised the Commission investigators that the stations' news scripts were not available for the period prior to September 29, 1947 and that the scripts which were available were not complete. On November 12, 1948, the Commission ordered an Investigatory Hearing on issues relating to whether Mr. Richards issued instructions to employees of the three stations controlled by him, (KMPC, WJR and WGAR) to distort the news, what disciplinary action may have been taken against employees who failed to carry out such instructions, and the extent to which the facilities of the stations were used to carry out said instructions.

16. The law firms of Dow, Lohnes and Albertson regularly represented Radio Station KMPC and Kirkland, Fleming, Green, Martin and Ellis regularly represented Radio Stations WJR and WGAR and both firms had submitted to the Commission on September 3, 1948, in behalf of Mr. Richards and the three stations, an affidavit and voluminous material relating to the operations of the three stations, in attempted refutation of the charges upon which the investigatory hearing was later ordered. On December 23, 1948, the Commission issued a notice setting February 21, 1949 as the hearing date for the

Investigatory Hearing. On the following day the law firm of Wheeler and Wheeler filed an appearance. On February 16, 1949 the hearing was continued to March 16, 1949 on the Commission's own motion.

17. A petition was filed by Mr. Richards on February 24, 1949 requesting that he be heard personally in Washington by the Commission en banc. This petition was denied without prejudice on the following day. On March 4, 1949 the hearing was continued to March 23, 1949.

18. Commission Visits to Radio Reports. Shortly before the scheduled date of this hearing, Commission representatives contacted Radio Reports, Inc. Radio Reports, Inc. is a private radio monitoring company with its main office in New York and branch offices in eight large cities including Los Angeles, Detroit and Cleveland. The company performs a service similar to a newspaper clipping bureau. A Commission representative, Raymond Lewis, visited the headquarters of Radio Reports, Inc., in New York City on February 24, 1949, and contacted Mr. Edward F. Loomis, President, and Garton B. Carruth, Vice President of Radio Reports. Commission representative requested Mr. Loomis' permission to examine the files and records of the Los Angeles office of Radio Reports, Inc. This permission was granted on a purely voluntary basis (FCC. Ex. 520). Several members of the Commission staff were in Los Angeles in the early part of March 1949, in preparation for the hearings scheduled to begin on March 13, 1949.

19. Mr. Lewis and another Commission representative visited the Los Angeles office of Radio Reports, Inc. on March 3, 1949, at which time they spoke with Mrs. Emily Timmons, the manager. Permission was granted for the Commission representatives to examine records and notesheets for particular dates and periods at the Radio Reports' office. After the first two days, in view of the extremely crowded conditions in the Radio Reports' office, permission was given for the Commission staff to take out for examination notesheets and a selected number of KMPC recordings. A receipt was given for all material which was taken by the Commission <sup>1/</sup>(App. Ex. 263). The notesheets taken at that time covered all the stations in Los Angeles whose programs Radio Reports had monitored since Radio Reports did not have its notesheets segregated by stations.

20. On March 5, 1949, a subpoena duces tecum was served on Mrs. Timmons (App. Ex. 261) for recordings and notesheets of news broadcasts of KMPC up to February 10, 1948. On March 14, 1949, Commission representatives visited Radio Reports and interviewed Mr. Si Nathanson, the West Coast field representative of Radio

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<sup>1/</sup> The receipt dated March 4, 1949 covered the following material:

"123 records March, June, Oct. 1947  
some notesheets 1946  
all notesheets 1947 through Feb. 1948  
received from Radio Reports, Inc.  
Los Angeles office  
plus two records Oct. 1947".

Reports. During this visit, representatives were allowed to examine the Radio Reports file of correspondence relating to KMPC and to take certain of the correspondence. A receipt was given at this time for this correspondence and for 129 additional discs which were taken by the Commission staff (App. Ex. 264).

21. This file revealed that the officials of KMPC, including Mr. Richards and Mr. Reynolds, had knowledge of the monitoring service of Radio Reports since as far back as 1942, and that there had been business negotiations between Radio Reports and officials of KMPC during this period.

22. During this visit Mrs. Timmons prepared a 12 page document (App. Ex. 258), listing on its cover sheet what records, notesheets and logs of KMPC Radio Reports had available<sup>✓</sup>. On the other pages were listed the Radio Reports' logs of its KMPC monitorings, which logs first began on January 27, 1947.

23. On March 16, 1949, Wheeler & Wheeler requested a continuance of the hearing on the ground that an application for transfer by Mr. Richards of his control of the three stations would be submitted. An order was adopted by the Commission on the following day granting

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<sup>1/</sup> This listing showed the following:

"Radio Reports, Inc., Los Angeles office

Records — 1942 through 1949 (Except for 2,000 shipped to Dictating and Recording Co., Los Angeles for resurfacing).

Notesheets — 1946 through 1949 (a few from 1944 and 1945)

Logs — 1947 through 1949"

(App. Ex. 258)



this request and providing that such transfer of control applications should be filed on or before April 18, 1949. The scheduled hearing was on that date indefinitely postponed.

24. On March 28, 1950, the notesheets previously taken by the Commission staff relating to stations in Los Angeles other than KMPC were returned to Radio Reports. A few notesheets for some programs of stations other than KMPC were retained. On that date, some additional discs were taken. A receipt was given to Radio Reports which reflected the material retained and the new material taken<sup>1/</sup> (App. Ex. 262).

25. At this time, Mr. Lewis, the Commission representative, suggested that an itemized receipt, particularly describing all items taken, be prepared, but Mrs. Timmons advised him that she did not feel that a receipt in that form was necessary<sup>2/</sup> (T. 15959).

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1/ The receipt read as follows:

"Returning all notes and records; minus notes and records for KMPC '46, '47, and up through February, 1948. Plus 44 discs and notesheets December 1947 - taken 3/28/49"

2/ All the material which Radio Reports permitted the Commission to take was later covered by an itemized receipt prepared by a representative of the General Counsel and a representative of applicants' counsel (FCC Ex. 477).

26. The material thus retained by the Commission remained in the Commission's possession until it was turned over to the custody of the Examiner on October 19, 1950, during the course of the hearings in the instant proceedings. This material consisted of the following:

- (a) Notesheets covering programs of KMPC recorded by Radio Reports beginning April 13, 1946, through February 1948<sup>1/</sup>.
- (b) 300 discs covering KMPC newscast programs for the months of March, June, October and December, 1947, and for various unspecified dates prior to January 1, 1947.
- (c) Some non-KMPC notesheets for specific dates in October and December, 1947.

27. As of the time of the Commission action indefinitely postponing the investigatory hearing, Radio Reports had agreed to preserve all its monitorings.

28. By letter dated March 15, 1949, Mr. Loomis, President of Radio Reports, Inc., confirmed the Commission's request to preserve all its monitorings and noted that Radio Reports was suffering a loss of some \$200 in so doing (App. Ex. 266). The Commission replied on March 28, 1950 again requesting that Radio Reports withhold the

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These were all the notesheets which Mrs. Timmons believed she had at that time. Later she discovered notesheets going back to January 1946 (See p. 94, infra).

reprocessing of its monitorings concerning KMPC, WJR and WGAR (App. Ex. 267).

29. In April 1949, Radio Reports asked to be released from its obligation to preserve WJR monitorings. This was agreed to by the Commission's General Counsel. (App. Ex. 268 and FCC Ex. 536) (The Commission had been advised that the WJR newscrips were available for several years back).

30. On June 8, 1949, Radio Reports wrote again stating that they wished to resurface KMPC monitorings being held at the Commission's request (App. Ex. 269). In reply the Commission, by letter of its General Counsel dated June 16, 1949 advised Radio Reports that there was no further need to retain any recordings prior to January 1, 1947; or any recordings or summary sheets made after that date, "except those pertaining to Radio Station KMPC" (App. Ex. 270).

31. On July 25, 1949 the Commission designated for hearing on specified issues applications for the transfer of control of Stations KMPC, WJR and WGAR, and on the same day, an order was adopted designating for hearing on specified issues the application for renewal of license of Station WGAR. These proceedings were consolidated with the investigatory hearing.

32. On August 8, 1949, applicants filed a petition for extension of time to file a motion to change the issues. This was granted on August 12, 1949. In the meantime, renewal applications were filed by Stations KMPC and WJR on August 25 and

August 30, respectively.

33. On September 13, 1949 applicants filed for a further extension of time to file a motion to change the issues in the designated hearing. This motion was granted on September 16, 1949 and the time for filing was extended to October 19, 1949.

34. On September 28, 1949, the Commission designated the renewal applications of KMPC, WJR and WGAR<sup>1/</sup> for hearing on stated issues in a consolidated proceeding with the transfer applications ( **Docket 9193** ).

35. Appearances were filed in the renewal applications of KMPC, WJR and WGAR on October 14, 1949, by the law firms of Wheeler & Wheeler; Dow, Lohnes and Albertson; and Kirkland, Fleming, Green, Martin and Ellis.

36. On October 17, 1949, applicants filed a third petition for an extension of time to file a motion to change the issues. The Commission granted the further extension and the time was extended to November 7, 1949.

37. The Motion to Change the Issues was filed on November 7, 1949, and was denied by the Commission in a Memorandum Opinion and Order of January 11, 1950 in which a hearing on the consolidated proceedings was scheduled for March 13, 1950 in Los

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<sup>1/</sup> This order superseded the order of July 25, 1949 setting for hearing WGAR's renewal application. At the same time, the order for an investigatory hearing was vacated.



Angelen. On January 16, 1950 Examiner J. Fred Johnson was designated to preside.

38. On or about February 15, 1950, the law firm of Fulton, Walter and Halley entered the case as counsel for the renewal cases of KMPC, WJR and WGAR (P. 37 - Pre-Hearing Conference 6/6/50). Thereafter, this firm assumed the responsibility of the conduct of the proceedings on behalf of the applicants and although the appearances of the other counsel were not withdrawn, they apparently did not participate formally in any motions, pleadings or other matters connected with the conduct of the proceedings. Members of these other firms (except Wheeler & Wheeler) were present at the table of applicants' counsel from time to time during the course of the hearings.

39. On February 21, 1950, the law firm of Fulton, Walter and Halley filed four pleadings on behalf of the applicants, KMPC, WJR and WGAR and on behalf of Mr. Richards; a motion for a pre-hearing conference, a motion for a ruling that the burden of going forward with the evidence was on the Commission, a motion for a more definite statement of matters of fact and law asserted and for a bill of particulars, and a petition for conformance of procedure to Section 9(b) of the Administrative Procedure Act. On February 28, 1950, the General Counsel filed a reply to these pleadings, and on the same day a pre-hearing conference was ordered by the Examiner for March 1, 1950. By Memorandum

Opinion and Order of March 1, 1950, the Commission denied the motion for a bill of particulars and the petition for conform-  
ance of procedure to Section 9 of the Administrative Procedure  
Act. At the pre-hearing conference (p.7) the General Counsel  
agreed to proceed first at the forthcoming hearings with the  
introductions of testimony.

40. At this pre-hearing conference Mr. Fulton in effect  
renewed his request for a bill of particulars and despite the  
denial of his motions, he requested that he be permitted to  
examine before proceeding to hearing all evidence and informa-  
tion pertaining to the subject matter of the hearings. Near the  
end of this conference after his general requests had been re-  
fused, he requested that he be permitted to examine any "monitorings"  
of KMPC newscasts for periods prior to September 1947 (p. 38).

41. On March 3, 1950, Mr. Fulton filed a motion for a 30-day  
continuance of the hearing, which was denied by the Commission on  
March 9, 1950.

42. The first hearing was held in the period March 13 to  
April 1, 1950, during which time the Commission presented the  
testimony of a number of witnesses who testified with respect  
to instructions by Mr. Richards regarding news programs.

43. At the outset of the hearings on these proceedings,  
applicants engaged the Fred Eldean Organization, a public relations  
firm, to handle the applicants' publicity during the course of the

hearing. In connection with these publicity activities the Fred Eldean Organization immediately placed orders with Radio Reports to monitor the newscasts of stations in all cities throughout the country in which Radio Reports maintained offices for items dealing with the hearings in these proceedings (FCC 408, 529, 535). Such reports were rendered by Radio Reports throughout the course of the hearings before Examiner Johnson which began on March 13, 1950 and which were recessed on April 1, 1950 (after the Commission completed presentation of its Los Angeles witnesses).

44. When the hearings were recessed, Examiner Johnson set September 6, 1950, for the presentation of applicants' case. On April 12, 1950, upon a motion for reconsideration filed by the General Counsel, the hearing date was advanced by Examiner Johnson to May 15, 1950.

45. At this time, when there was every reason to believe that applicants' case would begin on May 15, 1950, before Examiner Johnson, Mr. Robert O. Reynolds, Vice-President and General Manager of KMPC, some time between April 16 and April 21, 1950, (FCC Ex. 407, T. 15397) made a call to Radio Reports and registered his "surprise" and "ignorance" of the existence of Radio Reports.

46. Examiner J. Fred Johnson died on May 2, 1950. As a result, the Commission continued the hearing to June 5, 1950, and designated Examiner Cunningham to hear the remaining evidence in the proceedings.

47. On May 9, 1950, the firm of Fulton, Walter and Halley in behalf of KMPC, WJR and WGAR and Mr. Richards moved for an amendment to the order appointing the Examiner to direct him to hear all evidence de novo. The General Counsel consented to the grant of this motion and it was granted on May 23, 1950.

48. At this point, Mr. Fulton attempted, without notice to the General Counsel, to discuss with Examiner Cunningham his desire to alter the procedure in the former hearings so that applicants would proceed first in the presentation of their case in the de novo hearings. Upon hearing of Mr. Fulton's intentions with respect to this matter, the General Counsel requested the Examiner to schedule a pre-hearing conference to discuss the order of procedure. Mr. Fulton's unavailability for a pre-hearing conference resulted in the conference not being held until the day before the scheduled date of the hearing. The conference was held in Los Angeles, late Sunday afternoon June 4, 1950. At this pre-hearing conference Mr. Fulton requested the opportunity to proceed first with the introduction of their testimony. This request was approved by the Examiner. However, the following day, on June 5, the Commission upon request of the General Counsel continued the hearing until June 14 to give it an opportunity to examine into the merits of this ruling. On June 12, 1950, the Commission upon appeal by the General Counsel of the Examiner's ruling, set aside the ruling and ordered that the General Counsel be permitted to proceed first



with the presentation of testimony in accordance with the agreement reached at the March pre-hearing conference.

49. The Commission again presented its direct case from June through August 1950. Time and again, the question of the missing KMPC scripts and of the unavailability of newscrips prior to September 1947 was raised. These questions were stressed particularly with Mr. Reynolds during his 26 days on the stand from June 14 to July 11, 1950.

50. On June 23, 1950, the Fred Eldean Organization ordered from Radio Reports full coverage of statements made by Fulton Lewis, Jr. concerning the Richards case. The order included sending one copy of all such manuscripts to Mr. Wilbur Sparks of the law firm of Fulton, Walter and Halley in Washington, D. C. (FCC Ex. 533).

51. On September 5, 1950, applicants began the presentation of their case. More than six weeks later, on the day before the date fixed by the Examiner for termination of the hearings in Los Angeles, Mr. Fulton brought to the stand Mrs. Emily Timmons, manager of the Los Angeles office of Radio Reports with the proper setting of a full press coverage. After presenting her testimony, he issued charges against the Commission staff having to do with "suppression, concealment and destruction" of evidence alleged to be necessary to applicants' defense. Mr. Fulton made these assertions in the guise of a motion to strike all the testimony of the

newscasters who had testified in behalf of the Commission. After hearing all the evidence on this matter which Mr. Fulton had to present, the Examiner denied his motion and struck from the record all of his assertions of "suppression, concealment and destruction". No additional evidence in support of these charges was ever presented by applicants' counsel. Mr. Fulton stated at that time that he desired to file a brief in support of his motion (T. 14571).

52. Mr. Fulton was successful in his only purpose in making these charges, for the press gave his assertions considerable coverage and his charges, in the case of at least one publication, were interpreted as charges that the Commission staff "ordered" destruction of Radio Reports' material.<sup>1/</sup>

53. In making his charges of "suppression, concealment and destruction" on October 18, 1950, Mr. Fulton vigorously denied that he or his firm had any knowledge of Radio Reports prior to about September 19, 1950, the date on which it was alleged applicants' counsel "accidentally" discovered that Radio Reports existed. This "accidental discovery" was developed through

<sup>1/</sup> The activities of applicants' counsel in the conduct of the proceedings were synchronized with those of Mr. James Quollo, an employee at WJR, who was present at the hearings in connection with applicants' publicity activities and who maintained close contact with the representatives of the press, handing out press releases to them concerning evidence developed or to be developed by applicants.

testimony of Mrs. Timmons, that a Miss Lucille Jones, a proposed witness for applicants, who was in quest of recordings of the "Open Forum" program pursuant to a request by applicants' counsel, telephoned Radio Reports shortly before September 19 to inquire if Radio Reports had such recordings (T. 15555). Mrs. Timmons allegedly advised Miss Jones that the F.C.C. had taken all of KMPC's recordings in March 1949 and thereupon Miss Jones stated that applicants' counsel would be in touch with Radio Reports (T. 15553-15554).

54. On about September 19, 1950, George Frampton, an associate in the law firm of applicants' counsel, contacted Mrs. Timmons and allegedly learned of the Commission's obtaining of Radio Reports material in March 1949 and of the alleged resurfacing by Radio Reports of other KMPC recordings and their destruction of KMPC notesheets after receiving the Commission's letter of June 16, 1949. Frampton pointedly expressed to Mrs. Timmons as Reynolds had done in April of 1950, his "amazement" that applicants' counsel had not found out about Radio Reports sooner; he even informed her that they had made inquiries of hundreds of witnesses who had not told applicants' counsel about Radio Reports <sup>1/</sup>(T. 15918).

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<sup>1/</sup> It will be shown that many of applicants' witnesses, including KMPC employees, were fully aware of Radio Reports, either through telephone contacts or by virtue of having been customers of Radio Reports.

55. Between the time of Frampton's alleged first contact with Radio Reports on or about September 19, 1950 to the date Mrs. Timmons came to the stand, applicants' counsel displayed no interest in any recordings of KMPC newscasts which Radio Reports might have had except certain manuscripts of KMPC newscasts which had been ordered from Radio Reports by certain Jewish organizations. This indifference persisted during this period although Mrs. Timmons advised applicants' counsel of having discovered large quantities of recordings which she previously thought had been resurfaced (T. 15950-15952). But applicants' counsel was much more interested in this period in obtaining all of the correspondence and information relating to the Commission's previous dealings with Radio Reports (T. 15947). From examination of the receipts previously referred to (p. 15, 17, supra) applicants' counsel knew that Commission counsel had the KMPC notesheets but no suggestion was made to Radio Reports that Radio Reports request the return of the material from Commission counsel, so applicants' counsel might examine it. Nor was any specific request for its production made by applicants' counsel directly.

56. When Mr. Fulton made his motion to strike on October 18, 1950 (T. 14558) he demanded on the record (T. 14559) that a subpoena - duces - tecum be issued to the Commission's General Counsel



to produce the Radio Reports material in his possession<sup>1/</sup>. The General Counsel stated that no subpoena would be necessary since all the material would be produced and turned over to the Examiner. This was done on the following day (T. 14892). Accordingly, the Examiner denied the request for a subpoena.

57. Shortly after the conclusion of the Los Angeles phase of the hearings, Mr. Fulton issued a statement to the press, much in the vein of a press release he issued in April 1950 at the conclusion of the hearings before Examiner Johnson, attacking the Commission's case, attacking the Commission staff, Commission witnesses and extolling the virtues of Mr. Richards and Station KMPC which were allegedly shown during the hearings. In particular, Mr. Fulton repeated his assertions of concealment, suppression and destruction against the Commission staff. The General Counsel, on October 27, 1950, issued a public statement responding to the Radio Reports allegations made by Mr. Fulton.

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<sup>1/</sup> It is rather interesting that Mr. Fulton saw fit to make his requests for subpoenas to certain persons on the record, while he asked for hundreds of other subpoenas by ex parte written request to the Examiner. His on the record requests were made in the instances when he desired subpoenas to members of the Commission, the General Counsel, and Clete Roberts.

58. On November 4, 1950, while the hearings were in recess, all the Radio Reports material previously in the possession of Commission Counsel was turned over to applicants' counsel (FOC Ex. 477). During the recess, Radio Reports was engaged by applicants' counsel in a task of preparing excerpts from a group of KMPC recordings for the years 1946 and 1947 which were found in a box containing 6,500 records (13,000 recordings) (App. Ex. 277) which Mrs. Timmons and applicants' counsel had previously conveniently overlooked. These efforts resulted in a voluminous printed memorandum of 185 pages<sup>1/</sup> which was filed by applicants' counsel with the Examiner on November 21, 1950, the day of the resumption of the hearings in Detroit. It is to that memorandum that this Motion to Expunge is addressed.

59. During this recess, and while the hearings were going on in Detroit, a tremendous amount of information on this matter came into the possession of Commission counsel, all pointing to the fact that a wilful and malicious scheme had been devised by applicants' counsel in respect to this Radio Reports incident, with the obvious purpose of "smearing" the Commission staff. Most of this evidence was placed into the record over a period of several days in Detroit.

<sup>1/</sup> Entitled "Memorandum in Support of applicants' Motion to Strike from the Record any and all Evidence Relating to Newscasts Alleged to Have Been Broadcast over Radio Station KMPC Between July, 1942 and September 29, 1947, and for Other Relief".

60. Applicants' recalled Mrs. Timmons to the stand in Detroit for purposes of identification of specific material which applicants proposed to use. She was subjected to extensive cross-examination with respect to a large number of matters, discovered since her previous testimony in Los Angeles, which were in flat contradiction to that testimony, and which showed the knowledge of applicants and applicants' counsel of Radio Reports for considerable periods of time prior to the alleged date of counsels "discovery" of Radio Reports.

61. In addition, the Commission presented on this matter the testimony of two other Radio Reports representatives, Mr. Si Nathanson, West Coast Field Representative of Radio Reports, and Miss Margaret Novins, Secretary and Assistant Treasurer of Radio Reports. These witnesses testified further to the knowledge of Radio Reports by applicants or their counsel. A great quantity of documentary evidence from the files of Radio Reports bearing on this point was received in evidence.

62. The efforts of counsel to support their claims of "suppression, concealment and destruction" culminated in an offer of their Exhibit 271 which is identical to the Schedules appearing on pages 55 to 185 inclusive of their "Memorandum in Support of Motion to Strike etc". This exhibit contains excerpts from Radio Reports discs and notesheets purporting to be from newscasts and other programs on KMPC in the period prior to September 29, 1947, which

applicants' counsel contend contradict and disprove the testimony of Commission witnesses. The Examiner heard argument on applicants' Motion to Strike on December 4, 1950, and also upon a renewal of a request by applicants' counsel for a subpoena-duces-tecum to the General Counsel in respect to Radio Reports material<sup>1/</sup> The latter motion was again denied and the Examiner reserved ruling on applicants' Motion to Strike.

63. Applicants' Exhibit 271 was not received in evidence by the Examiner. As will be later pointed out, although Mr. Burns offered and had questioned Mrs. Timmons extensively on Applicants' Exhibit 271, when asked by the Examiner to state its materiality, he replied that he was unable to do so because Mr. Fulton, and not he, was familiar with the contents of the exhibit and with its materiality and Mr. Fulton was in Washington at that time. (T. 15865)

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<sup>1/</sup> Other motions not pertinent to the present discussion were also argued at that time.

ARGUMENT

- I. The sworn facts show irrefutably that the unsworn and self-serving assertions made by Messrs. Fulton and Burns that they had no knowledge of the existence of Radio Reports prior to about September 19, 1950, are false and grossly deceitful

64. The accusations that the Commission staff "suppressed, concealed and destroyed" Radio Reports recordings and summaries are pitched by Messrs. Fulton and Burns, applicants' counsel, upon their own unsworn and self-serving assertions (T. 15,882, 14,563, Memorandum p. 4) to the effect that prior to about September 19, 1950, they were ignorant of the existence of Radio Reports, of the nature of its service, or of the fact that Radio Reports had in the past monitored newscasts of radio stations. This claim of ignorance is not supported by a single word of competent sworn testimony. The reason is that any of the many persons who might logically have been called as witnesses by Messrs. Fulton and Burns would have been forced to disclose that applicants' counsel, including Mr. Fulton, did in fact know about Radio Reports almost from the day the firm of Fulton, Walter and Halley were engaged as counsel for applicants in the early spring of 1950.

65. The claim of lack of knowledge was improperly sought to be proven by applicants' counsel through incompetent testimony of Mrs. Emily Timmons, manager of the Los Angeles office of Radio Reports, to the effect that Mr. George Frampton, an associate in the firm of Fulton, Walter and Halley, told her that applicants'



counsel had no previous knowledge of Radio Reports prior to about September 19, 1950 (T. 15918). Frampton's assertion of lack of knowledge was obviously planted with Mrs. Timmons so that she could testify to that effect. Frampton was seeking to "alibi" ignorance pursuant to a predetermined plan, in much the same fashion as alibis of ignorance were sought to be planted with Mrs. Timmons by phone calls previously made by Robert Reynolds and Lucille Jones. As the Examiner pointed out, Mrs. Timmons' testimony of what Frampton told her was not admissible in so far as concerned the truth or falsity of his assertions that counsel was ignorant of the existence of Radio Reports. The Examiner appropriately pointed out that Mr. Frampton was right there to testify as to what knowledge he or the firm had or didn't have on this matter (T. 15921). But Frampton was never called to the stand.

66. Had Messrs. Fulton or Burns had any belief that they could have preserved even a semblance of integrity for themselves in connection with their claims of ignorance of Radio Reports, certainly they would have called to the witness stand one or more of a great number of persons connected with applicants whose past knowledge of the existence of Radio Reports for months and even years prior to September 19, 1950, is irrefutably established by evidence under oath. We are even willing to assume, at this point, that Messrs. Fulton and Burns are not presumed to be chargeable with the same knowledge of Radio Reports which was possessed by the chief officials and other persons connected with their own clients. It is

unnecessary to fall back upon any legal presumptions in order to establish their knowledge since there is a great volume of sworn evidence establishing, beyond a doubt, that Messrs. Fulton and Burns had actual knowledge of Radio Reports as far back as March of 1950.

- A. The evidence compels the finding that applicants' counsel were receiving, and also knew that applicants through their publicity agents, Fred Eldean Organization, were receiving Radio Reports monitorings of newscasts of radio stations throughout the country having to do with the hearings in these proceedings.

67. Had Mr. Wilbur Sparks, an associate in the law firm of Fulton, Walter and Halley, been called to the witness stand, he would undoubtedly have given the Examiner some facts flatly contradictory of the unsworn assertions of ignorance about Radio Reports which have been repeatedly made by the senior member of that firm, Mr. Fulton. For it is apparent from an uncontradicted exhibit introduced by the Commission (FCC Ex. 533) that Wilbur Sparks was the person in Mr. Fulton's firm named to receive the same manuscripts from Radio Reports as were ordered by Fred Eldean Organization, Mr. Richards, and the applicants' publicity agents. The manuscripts referred to were transcripts of news broadcasts of radio stations throughout the country, monitored by Radio Reports upon orders of Fred Eldean beginning in early March 1950. The facts are as follows:

...

68. The Fred Eldean Organization was engaged by applicants as publicity agent in connection with publicity and public relations work concerning this hearing (T. 14672). This organization had been a regular and active customer at Radio Reports dating back prior to 1948 (T. 15740A).

69. Prior to the first hearing of this case, which began on March 13, 1950 before the late Examiner Johnson, the Fred Eldean Organization had ordered from Radio Reports complete nation-wide coverage of AM, FM, and television transcriptions from all stations monitored by Radio Reports. Thus, the Fred Eldean Organization placed an order with Radio Reports in the early part of March 1950 for the monitoring of the newscasts of radio stations throughout the country having to do with the "hearings starting in Los Angeles March 13, in the case of G. A. Richards of Stations KMPC, WGAR and WJR, on charges he slanted news." (FCC Ex. 529)

70. As shown by an Order Confirmation from Fred Eldean Organization dated March 17, 1950, this order was revised so as to cover: "All mentions of Richards FCC Hearings except stories heard on WJR, Detroit." (FCC Ex. 408) On March 17, 1950, Mr. P. R. Rieber, Vice-President in Charge of Sales of Radio Reports, sent the following telegram to Radio Reports, Inc., Washington, D. C.:

"Rush all material on Richards FCC hearing  
to Ralph Bugli of Eldean."

Handwritten alongside the name Richards on this telegram is the following notation: "Radio Station KMPC, L.A." (FCC Ex. 535)

71. The foregoing order was cancelled by Eldean on May 17, 1950 (FCC Ex. 530, 531) about 45 days after the adjournment of the former hearings in these proceedings and about three weeks before the scheduled date (June 5) of resumption of the hearings before Examiner Cunningham. The hearings before Examiner Cunningham began on June 14, 1950. Nine days later an order was placed by Eldean "on the Richards vs. F.C.C. cases", for "any story on Fulton Lewis". (FCC Ex. 532) An inter-office memo of Radio Reports dated June 23, 1950 (FCC Ex. 533) is attached to the confirmation of this order. (FCC Ex. 532) The following notation appears on this memo:

"Send one copy to Mr. Wilbur Sparks, 1411  
Pennsylvania Ave., Washington, D. C."

72. The address is that of the Washington office of Fulton, Walter & Halley. The "Mr. Wilbur Sparks" referred to is undeniably the same as the Wilbur D. Sparks who signed a receipt on behalf of Fulton, Walter & Halley (FCC Ex. 477) for Radio Reports material turned over to applicants' counsel by Commission counsel on November 4, 1950.

73. Mr. Fulton would apparently ask the Examiner to believe that he did not know that Mr. Sparks was designated to receive Radio Reports material or that he and Mr. Sparks were not on speaking terms. The only possible explanation there is of the fact that Mr. Sparks was designated to receive material from Radio Reports is that Mr. Fulton, knowing that Eldean had placed orders for Radio Reports

manuscripts, had asked that a copy of the manuscripts be sent to his office addressed to Mr. Sparks who would see to it that such copies were turned over to Mr. Fulton. It would be unbelievable that either Radio Reports or Fred Eldean would order copies of manuscripts to be sent to Mr. Fulton's firm without request or knowledge of that fact by Mr. Fulton. No explanation, either sworn or unsworn, was forthcoming from Mr. Sparks, Mr. Fulton, or anyone else.

74. Mr. Richards' publicity machine, as was apparent in so many instances during the course of the hearing, was geared to work in conjunction with the efforts of Messrs. Fulton and Burns in the handling of the hearing.<sup>1/</sup> One would be credulous indeed to believe that Mr. Fulton and Mr. Burns did not know as early as March of 1950 that Mr. Richards and the applicants were obtaining Radio Reports material concerning these hearings in connection with the publicity activities in which they were so deeply interested. Significantly, in the face of the obvious import of the facts of record, they did not see fit to bring to the stand any one connected with the Fred Eldean Organization to deny that Eldean sent or provided Radio Reports material to Mr. Fulton himself or to any member of his firm, or to Mr. Richards, Mr. Reynolds or other persons connected with applicants who know about Radio Reports and with whom Mr. Fulton was in frequent contact in connection with

<sup>1/</sup> Many of the so-called "reputation" witnesses produced by applicants' counsel in Los Angeles had been fed elaborate publications produced by that machine.



the hearing. Quello, the promotion and publicity director of WJR, was assigned to create favorable publicity for the three Richards' stations during the hearing. In fact, the nature of his publicity activities at the hearing were based upon discussions with Mr. Fulton himself (T. 14676). It is entirely unlikely that Mr. Fulton or Mr. Burns would deny that Quello was present for publicity purposes almost daily, if not daily, and continuously at the former hearings before Examiner Johnson, as well as throughout the instant hearings. It is inconceivable that Quello was unaware that through Fred Eldean, Radio Reports was being used by KMPC, WJR and WGAR in order to ascertain the nature of the radio publicity the hearings were getting, and even more inconceivable, assuming Messrs. Fulton and Burns did not otherwise know that fact, that Quello did not discuss that fact with them. Quello was in the court room in Detroit at the time of and subsequent to the disclosure of the evidence concerning Eldean's contacts with Radio Reports. Yet Quello was not called to the stand to deny that he knew about Radio Reports; or to deny that he ever discussed it with Messrs. Fulton and Burns over the many, many weeks beginning in March 1950, when he was in daily contact with them at the hearings.

- B. The record compels the finding that Mr. Fulton not only knew about the existence of Radio Reports at least as early as March 1, 1950, but also was aware of the fact that Commission investigators had previously visited and obtained material from Radio Reports.

75. Mr. Fulton came to a pre-hearing conference before Examiner Johnson on March 1, 1950, armed with a series of blunderbuss requests for the evidence in the possession of Commission counsel that had to do with the forthcoming hearings. Requests to the same effect, under the guise of a motion to the Commission for a bill of particulars and for clarification of the issues, had been denied by the full Commission on the very morning of March 1, 1950. Nevertheless, at the pre-hearing conference, Mr. Fulton repeatedly requested, in vague generalities, all the evidence that the Commission might have in its possession. It was obvious that these requests, like the series of last-minute requests contained in the motions which had been denied by the Commission, were obviously made for the dilatory purpose of forestalling the already long-delayed hearing in these proceedings. It should be remembered that the hearing was scheduled to begin on March 13, 1950, in Los Angeles. The hearings had previously been delayed a number of times for substantial periods upon requests of the applicants. No previous request had ever been made by applicants for a pre-hearing conference although the hearings had been ordered more than six months before. Thus, with hearings scheduled to be held

at the other end of the country in less than two weeks, after plans had already been made by the Commission's staff for departure for Los Angeles, and after the tremendous volume of evidentiary material in the Commission's possession had been packed and shipped to Los Angeles, Mr. Fulton came in on March 1 with a blunderbuss request for, in effect, every scrap of information in the Commission's possession obtained during its investigations. His only purpose was to obtain a delay of the hearings for he knew full well that the mere physical job of showing him all this information, segregating it, making copies of documents, preparing receipts of documents and permitting him to examine the information would have delayed the hearings interminably and seriously handicapped all of the preparations of the Commission's staff for the hearings. With perfect justification, therefore, Mr. Fulton's requests at the pre-hearing conference for the disclosure of all information in our possession were properly refused by the General Counsel.

76. Nevertheless, despite the fact that he had been told several times that we would not turn over to him any of the materials he sought, Mr. Fulton doggedly persisted. Near the end of the conference, although an entirely different subject was under discussion, he informed us, in effect, that he knew we had had some contacts with Radio Reports. He said, after reference had been made to the lack of KMPC news scripts for the period prior to September 1947:

"\* \* \* I had in mind such things as the monitoring, if any, in earlier periods where possibly something that we do not have might be in existence \* \* \*"

77. Examiner Johnson intervened and said that Mr. Fulton had already been advised by Mr. Cottone that "he (Mr. Cottone) is not prepared to let you see anything that the Commission has, other than what you have already seen." (Pre-Hearing Conference, March 1, 1950, p. 88-89)

78. The significance of this incident at the pre-hearing conference is that it compels the conclusion that Mr. Fulton knew at that time about Radio Reports and knew that we had obtained some materials from Radio Reports. Let us reflect upon what Mr. Fulton could have had in mind when on March 1, 1950, he spoke of "the monitoring in earlier periods." What "monitoring" could Mr. Fulton possibly have had in mind covering the period prior to September 1947? It would be utterly fantastic to suppose that Mr. Fulton was referring to recordings which the Commission might have made of the KMPC newscasts, for this would necessarily mean that Mr. Fulton was laboring under the delusion that many months and possibly years before the time that the charges of news slanting at KMPC came to light the Commission was suspicious of KMPC and was maintaining a policing force to monitor its newscasts around the clock. It would be even more fantastic to suppose, unless we are to attribute colossal naivete to Mr. Fulton, that he believed the Commission engaged, as a routine matter, in wholesale monitoring

of hundreds of thousands of newscasts and other programs of the thousands of radiobroadcast stations throughout the country and, therefore, to his mind, we must have had recordings of KMPC newscasts. The only possible sense that can be made of Mr. Fulton's request in March of 1950 for "monitoring" of KMPC newscasts is either that he knew that we had obtained recordings from Radio Reports (and he cunningly refrained from acknowledging this fact by couching his request in abstractions), or that he knew there was a Radio Reports organization from which we might have obtained recordings.

79: It is significant that Mr. Fulton, despite this obvious knowledge, never made a specific request identifying the "monitorings" he claimed to wish to examine until he was ready to unleash a trumped-up charge of "concealment, suppression and destruction". If his motives had been honest and sincere, he had plenty of opportunity, long before he produced Mrs. Timmons on October 19, 1950, to have sought to ascertain what material, if any, might be useful to him on cross-examining Commission witnesses or in defense, by coming forward with a specific request or by going directly to Radio Reports. For, almost eight months elapsed from the time of the first pre-hearing conference in March of 1950 until the day he made his accusations on the record in Los Angeles based upon his alleged lack of knowledge of Radio Reports.



C. The sworn uncontradicted evidence overwhelmingly shows that top officials and employees of the applicants (including G. A. Richards himself and Robert Reynolds, Vice President and General Manager of KMPC), numerous witnesses called by the applicants, and co-counsel in these proceedings, had full knowledge of Radio Reports, and raises the clear inference that Messrs. Fulton and Burns had full knowledge of Radio Reports for a considerable period of time prior to the alleged date of their "discovery" of Radio Reports.

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80. Nor a word of evidence was offered by Messrs. Fulton or Burns to refute a great amount of evidence showing that:

1. Mr. Richards, in addition to the fact that he must have regularly received the Radio Reports manuscripts ordered by his publicity agent, the Fred Eldean Organization, knew about Radio Reports as far back as the year 1943, having engaged in discussions at that time involving a plan whereby Radio Reports would take office space in the KMPC quarters.
2. Mr. Reynolds knew about Radio Reports from at least as far back as 1943, having participated in the discussions involving office space for Radio Reports at KMPC, having discussed Radio Reports with other persons at various times prior to the hearings in these proceedings,

and having specifically contacted Radio Reports in April of 1950, shortly after the former hearings before Examiner Johnson.

3. Station WJR, one of the applicants herein, had been a client of Radio Reports and George Cushing, head of the newsroom at WJR for many years, had full knowledge of Radio Reports and its monitoring activities long before the alleged date of counsel's discovery of Radio Reports.
4. A great many employees of KMPC, many of them witnesses called by applicants' counsel, knew about Radio Reports, and in some instances maintained frequent contacts with Radio Reports.
5. A large number of non-employee witnesses called by applicants' counsel who were clients of Radio Reports obviously discussed Radio Reports with applicants' counsel.
6. One of the counsel of record for applicants in the consolidated proceedings, Mr. Louis G. Caldwell, had ordered Radio Reports material on different occasions during the period

September 1948 through January 1950.<sup>1/</sup>

81. (1) G. A. Richards' knowledge of and contacts with Radio Reports. - Not a shred of evidence was presented by applicants to controvert the fact that Mr. Richards was fully familiar with Radio Reports long before the alleged date of his lawyer's discovery of Radio Reports. Unquestionably, Mr. Richards or the corporate applicants must have known about and footed the Radio Reports bill incurred by Fred Eldean in their behalf. Unquestionably, the order for Radio Reports coverage of newscasts throughout the country was placed either at Mr. Richards' request or with his approval, and for his enlightenment and information.<sup>2/</sup> Yet Messrs. Fulton and Burns would have the Examiner believe that they never discussed this matter with Mr. Richards!

<sup>1/</sup> Mr. Caldwell appeared as a witness, after having been advised in advance by the Commission's General Counsel that evidence was going to be introduced showing Mr. Caldwell's knowledge of Radio Reports. Mr. Caldwell testified that he and his firm had on specific occasions in the past placed orders with Radio Reports but not in any manner connected with these proceedings (T. 15976-15978). His testimony shows that Messrs. Fulton and Burns had not apprised Mr. Caldwell of their intention to make charges of suppression and concealment against the Commission staff based upon a claim of lack of knowledge "by applicants' counsel" (T. 15982-15983). Nor had they ever consulted Mr. Caldwell, a distinguished attorney with many years of radio experience, as to possible sources of recordings of radio station newscasts, before the events leading up to the charges made by Mr. Fulton (T. 15983), something which any forthright lawyer would have done under the circumstances before publicly hurling reckless charges involving the integrity of other members of the bar.

<sup>2/</sup> See reference to testimony of McCulla, infra p. 50.

82. Mr. Richards' knowledge of Radio Reports and its activities actually dates back to the year 1943. At the time of their visit to Radio Reports in March of 1949, Commission investigators had been permitted to take correspondence in the files of Radio Reports which established knowledge of Radio Reports by Messrs. Richards, Reynolds and others. (T. 14814) This correspondence was introduced into evidence in Los Angeles on October 19, 1950, during cross-examination of Mrs. Timmons. (FCC Ex. 434-442) It was indicated in that correspondence that a Mr. William Parker, a former commentator at KMPC, had had discussions in 1943 with Mr. Richards, Mr. Reynolds and representatives of Radio Reports, in connection with a proposal under which Radio Reports would move into KMPC's quarters. (FCC Ex. 439) It was not until after the conclusion of the hearings that the Commission staff succeeded in locating and contacting Mr. Parker. We have obtained from him his affidavit, a photostat of which is attached as Appendix A<sup>1/</sup>, which establishes, beyond a doubt, both Mr. Richards' and Mr. Reynolds' participation in the aforementioned discussions. The facts are as follows:

83. Mr. Richards in 1943 discussed with Mr. Parker, a radio commentator at KMPC at the time, the inclusion in his broadcasts of excerpts from certain commentators. Mr. Parker advised Mr. Richards

1/In addition to the affidavit of Mr. Parker, additional affidavits, photostats of which are attached as Appendices, have been obtained by Commission Counsel since the time evidence on the Radio Reports matter was being taken in Detroit.

that he might do a "Commentary on Commentators" incorporating the material Mr. Richards desired in such a program. In connection with this proposed program, Mr. Parker told Mr. Richards about Radio Reports, Inc.; that it was an organization that "made disc recordings and then supplied a typewritten text" of radio programs. At the request of Mr. Richards, Mr. Parker visited the regional office of Radio Reports, Inc., in Los Angeles "about obtaining disc recordings of commentators". Mr. Parker had advised Mr. Richards that he would see if "some mutually satisfactory arrangement could be worked out whereby I would have free access to radio recordings which were monitored broadcasts made by Fulton Lewis, Jr., Mr. Kaltenborn, and others." (Appendix A)

84. At Radio Reports, Mr. Parker contacted Miss Wilkinson, the manager. A proposal was suggested by Mr. Parker whereby Radio Reports would permit the use of its monitored programs in exchange for free rental for the Radio Reports office at Station KMPC. Mr. Parker continues in his affidavit (Appendix A):

"The next time I saw Mr. Richards, which may have been a day or several days later, I told him the results of my interview with Miss Wilkenson. Mr. Richards, Mr. Reynolds, General Manager of KMPC, and I, looked about the radio station to see where we might find a place for Radio Reports. We all three came to the conclusion that such occupancy by Radio Reports would strain the already overcrowded facilities of the radio station. No definite statement was made by Mr. Richards or Mr. Reynolds that I should proceed with the matter or give any answer to Radio Reports. It appeared to Mr. Richards, Mr. Reynolds and myself, after



looking over the studio and discussing the possibility, that there was insufficient room to provide space for Radio Reports. We let the matter rest at that point without any further discussion."

85. Mr. Parker points out in his affidavit that, at a later time, he forwarded to Mr. Richards a letter from Radio Reports, inquiring as to this proposed plan:

"This communication, which I sent Mr. Richards, was passed along with other routine matters by messenger service between the radio station and wherever Mr. Richards was located. I wrote Miss Wilkenson to this effect and stated that Mr. Richards had phoned me after my broadcast and I had told him about the commentary material that I had mentioned during the Radio Reports discussions. As I recall, he said he had turned the matter over to Mr. Reynolds, Manager of KMPC."

86. There is further confirmation of this proposed plan to have Radio Reports use space in the KMPC radio station in a letter dated October 17, 1943, to Mr. Loomis, President of the company, from Miss Wilkenson, which stated in part:

"Virgil Smith, head of the news bureau, and Parker are working on a plan to initiate something new in the way of commentaries. The idea is to have--around 11 p.m. every night--a 'commentary on the commentators'. Sort of roundup of the general picture as presented by the various commentators during the day. When such a plan starts operation you can see how we would fit into it. Parker is a swell guy and definitely on our side. I have seen him several times lately and I'm sure he'll do a lot to help us if Reynolds, the station manager, and Richardson, the owner, fall in with his--and Smith's--plans. Meantime I am writing to Reynolds and giving him some idea of what R.R. can do." (FCC Ex. 436)

And on October 25, 1943, Miss Wilkinson wrote to Mr. Loomis as follows:

"I would be interested in hearing the details of your plans about a 'commentary' on the commentators' so that I may talk intelligently to Parker or Reynolds when this question comes up again. I think, too, that it would be better not to move out to KMPC, although it might solve the rent problem. Guess we'll just sit back and see what, if anything, they do about their plans for a program." (PCC Ex. 440)

87. Mrs. Timmons, applicants' witness, corroborated the fact that there were discussions between Radio Reports and KMPC concerning a plan whereby Radio Reports would take office space in the KMPC quarters (T. 14822).

88. (2). Robert O. Reynolds' knowledge of and contacts with Radio Reports. - The same facts relating to the Eldean Organization's orders for Radio Reports material which indicate Richards' knowledge of Radio Reports, show that Reynolds must have been fully aware of Radio Reports long before the alleged date of discovery of Radio Reports by the station's lawyers. It would be incredible that the station manager of KMPC was unaware during the former hearings of the orders by Eldean for Radio Reports coverage of newscasts concerning the hearing since KMPC undoubtedly was required to show the cost of this service.

89. But there is further evidence, much of which clearly demonstrates the extent of the duplicity and chicanery which characterize the assertions made by Messrs. Fulton and Burns in their Memorandum. As in the case of Mr. Richards, Reynolds' familiarity with Radio Reports goes back to 1943. We have additional sworn information which was not available during the time when evidence on this matter was being received, which shows the following facts:

90. Mr. Virgil Smith, former news editor of KMPC from September 1943 to February 1944, told Reynolds about Radio Reports and its function in connection with KMPC's possible use of the service. In an affidavit recently obtained (attached as Appendix B), Mr. Smith has stated:

"\* \* \* With Reynolds, the conversation was also casual, taking place as I recall while we were driving from Los Angeles to Beverly Hills. As I recall I told him that somebody had set up a business of listening to radio, commentators in particular, and making a digest of their remarks, and offering these reports for sale. I do not recall Reynolds' comments."

91. Mr. Parker in his affidavit (Appendix A) discusses a luncheon at the Biltmore Hotel given by Radio Reports, Inc. which he attended while he was associated with KMPC. He states that he told Mr. Reynolds about this luncheon and his reactions to a speech given by Mr. Loomis.

92. Clote Roberts in a sworn statement (photostatic copy of which is attached as Appendix C) states that he had discussed with Reynolds the question of Radio Reports and its activities in relation

to an incident which had occurred in 1947. The discussion described by Roberts indicates full knowledge by Reynolds, in 1947, of Radio Reports and the fact that it was monitoring KMPC newscasts. Mr. Roberts' affidavit states in part:

"\* \* \* In the course of our meeting I informed Mr. Reynolds of the fact that Radio Reports had told me they were monitoring my evening broadcasts for one of their clients. \* \* \*

I told Mr. Reynolds I was somewhat surprised to learn that Radio Reports was monitoring my broadcasts; that I was of the opinion they usually recorded only network programs; that I had the impression they, as a rule, wouldn't bother with an independent radio station.

Mr. Reynolds said he held the same general opinion of the activities of Radio Reports.

I have a distinct recollection of telling Mr. Reynolds that Radio Reports action in monitoring our broadcasts indicated they were probably doing the same thing all over the country. \* \* \*

As I recall, Mr. Reynolds concurred in these observations. He also agreed that such action by Radio Reports might indicate that KMPC's news broadcasts, even though we were not a network station, might be growing in importance insofar as the listening public in the Southern California area was concerned. \* \* \*"

93. The most vivid proof of the venality of the design behind the allegations of applicants' counsel regarding "destruction, suppression and concealment" and their unsworn and unproven assertions of their own lack of knowledge of Radio Reports is furnished by the next incident to be discussed.

94. The former hearings in these proceedings were recessed by Examiner Johnson on April 1, 1950. It is obvious that when Commission counsel stated on April 1, 1950, that he had concluded with the Commission's direct testimony in Los Angeles, applicants' counsel decided to utilize the knowledge they had about Radio Reports to attack the Commission's staff. For, knowing as early as the date of the pre-hearing conference of March 1950 about the Commission's contacts with Radio Reports, applicants' counsel felt that, with the Commission's direct case completed, they would be in control of the situation and be able to "spring" at their will their accusations of "destruction, suppression and concealment." They expected to start with the presentation of their direct case upon the resumption of hearings before Examiner Johnson. With this knowledge, counsel felt safe in now having Reynolds, the station manager of KMPC, make a telephone call to Radio Reports. So, shortly after May 15, 1950, was fixed by Examiner Johnson as the date for resumption of the hearings, Mr. Reynolds did telephone Radio Reports. This was obviously done at the instance of or with the knowledge of counsel.

95. Mr. Reynolds spoke to Mrs. Timmons, the manager of Radio Reports (T. 15397). Mrs. Timmons reports the incident to Colonel



Carruth, Vice President of Radio Reports, in an inter-office memorandum dated April 22, 1950 (FCC Ex. 467) as follows:

"Mr. Reynolds, vice president and general manager of KMPC called the other day, and said he had been in radio twelve years, and never heard of Radio Reports. Said he thought it was amazing. Sent him one of our booklets. Had a very nice conversation."

96. Mrs. Timmons had the following to say regarding Mr. Reynolds' telephone call in April 1950 (T. 15397, 15398):

"A. Well, he just asked about Radio Reports, and I told him briefly what we were and he said he was amazed; that he had been in radio 12 years and he never heard of Radio Reports.

The Presiding Officer: Tell us what you told him, to your best recollection, Mrs. Timmons.

The Witness: You mean about Radio Reports?

The Presiding Officer: What description did you give as to Radio Reports? Tell us exactly. Don't feel you must rush your testimony.

The Witness: Well, I usually tell if they ask me and most people seem surprised.

The Presiding Officer: What was the conversation?

The Witness: Well, what Radio Reports were. I usually say we are like a newspaper clipping service, only radio, and then I tell them briefly what I said when I testified, that we make recordings, transcribe and type portions, or the entire records for clients."

97. It is clear that Reynolds' only purpose in calling Radio Reports at that time was so that an alibi of prior ignorance of Radio Reports could be established by applicants' counsel by means

of the self-serving and obviously untrue assertions which Mr. Reynolds made to Mrs. Timmons on the telephone. Why should the manager of KMPC, out of a clear sky, call Mrs. Timmons to ask about Radio Reports and go to such lengths in conveying to her his surprise and amazement over the alleged fact that "he had been in radio 12 years and he never heard of Radio Reports"? The effort was clumsy and the chicanery obvious. As was the case in connection with the later call made by Lucille Jones, the Reynolds' call had been planned to precede a follow-up call to Radio Reports by applicants' counsel. (The striking similarity of the pattern here with the pattern followed when Lucille Jones later called Radio Reports should be carefully noted.) But that follow-up call was apparently not made at that time.

98. "The best laid plans of mice and men gang aft agley." Mr. Fulton's plan was to "spring" the charges of "suppression, concealment and destruction" of Radio Reports material upon the resumption of the hearings before Examiner Johnson, then scheduled for May 15, 1950. But the plan was thwarted at that time because neither Mr. Fulton, Mr. Burns, or Mr. Reynolds could foresee that Examiner Johnson was going to die a few days after Reynolds made his call to Radio Reports.

99. Examiner Johnson's death on May 2, 1950, caused a disruption of the plans of applicants' counsel for the reason that their planned schedule was upset by the Commission's action (unexpected

and unwanted by them even though they requested it), ordering a hearing de novo before Examiner Cunningham.<sup>1/</sup>

100. These circumstances now furnish the explanation of the feverish and desperate efforts made by Mr. Fulton to present his evidence first at the de novo hearings before Examiner Cunningham. Having obtained the unwanted new hearing, he found himself in the predicament of having caused Reynolds to call Radio Reports (a fact which Mr. Fulton feared might be discovered). He faced the possibility that if the Commission proceeded first at the second hearing, Commission counsel might use some Radio Reports material and thus spoil his carefully hatched plot! And his determination to carry through his plan to go first in order to "be able to spring" his charges was not deterred, even by the provisions of the Administrative Procedure Act and the Commission's rules against ex parte consultations! For after the new hearing was ordered by the Commission, without notice to and unknown by Commission counsel, he attempted unsuccessfully to discuss with the Examiner what Mr. Fulton knew to be a disputed question, namely, whether the Commission or applicants should proceed first at the new hearings (T. 3-4).

101. Mr. Fulton's efforts to proceed first failed; consequently he was forced to defer the execution of his plan until after the Commission had completed presentation of its testimony.

<sup>1/</sup> It is to be noted in this connection that in asking for a de novo hearing, applicants cavalierly and blandly stated in their petition that they would be glad to proceed first with their evidence at the de novo hearing.

102. It is important to note at this point that at the time of Reynolds' call to Radio Reports in April of 1950, Radio Reports had not as yet resurfaced 1946 or 1947 discs. Thus, on April 15 (1950) just some five or six days before, Mrs. Timmons had written to Colonel Carruth as follows:

".....We'll keep 1946 for a time. We're resurfacing 1947. And we'll send 1948 to Berkeley. I looked up our notes on the FCC, and they have both records and notes, various KMPC ones, and may call on us for others, and of course if they do, it will be unfortunate, because we may have resurfaced KMPC along with the others. We don't know who wants the Roosevelt records. Very mysterious....." (FCC Ex. 501)

It seems highly improbable that Mrs. Timmons, in view of the memo she had written at that time stating they were starting the resurfacing of KMPC records, would not have mentioned it to Mr. Reynolds. This improbability is heightened in the light of Mrs. Timmons' testimony that she had thought about trying to sell KMPC its records (T. 14886 ).

103. During the long period when Mr. Reynolds was on the stand in June 1950 he was asked many times about the missing KMPC news scripts and about the circumstances of destruction of newscasts covering the period prior to September 29, 1947. At that time, as is shown above, Reynolds knew of the existence of Radio Reports. At that time not a single newscaster who had testified at the hearings before Examiner Johnson as to Mr. Richards' instructions and

whose testimony applicants' counsel profess they desired to contradict by the Radio Reports material, had as yet been called to the stand in the hearings before Examiner Cunningham. Even if it could be assumed that applicants' counsel had had nothing to do with Reynolds' call to Radio Reports in April of 1950, two months before the start of the hearings, it is utterly inconceivable that Reynolds did not have discussions with any of applicants' counsel concerning Radio Reports and its monitoring service, particularly in view of all of the protestations made by applicants' counsel of their interest in having evidence of newscasts given on KWPC prior to September 29, 1947.

104. With all of the foregoing circumstances so clearly indicating that applicants' counsel must have known through Reynolds, if in no other way, about Radio Reports long before the start of the instant hearings, it is understandable why Messrs. Fulton and Burns did not recall Mr. Reynolds to the witness stand. Their failure to do so compels the finding that, had they called Reynolds, he could not have refuted but would have corroborated the fact that they had either caused Reynolds to call Radio Reports in April of 1950, or that in any event Reynolds discussed Radio Reports with applicants' counsel many months before the alleged date of their discovery of Radio Reports.

105. (3) Knowledge of Radio Reports by George Cushing. - Over a considerable period of time in 1948 and 1949, Mr. George Cushing,



Vice-President and Director of News and Special Events at WJR, was placing orders with Radio Reports for manuscripts of WJR programs monitored by Radio Reports in Detroit (T. 15691). Cushing ordered , , such manuscripts covering a program on WJR known as "In Our Opinion", on two separate occasions. In each case, Radio Reports was paid by the corporation check of WJR, The Goodwill Station, Inc. (FCC Ex. 527, 528)

106. During the year 1948, manuscripts from Radio Reports were ordered and were listed in the Account Book of Radio Reports as "George Cushing, Station WJR - Fisher Building, Detroit 2, Michigan." During that period the manuscripts purchased amounted to \$172.75 (FCC Ex. 542). In 1949 additional orders for manuscripts were shown as chargeable to this same account. With the exception of one order for manuscripts of the "Dick Osgood" program and for "Labor Views of the News", all other orders were for the "In Our Opinion" broadcasts.

107. When Mr. Nathanson of Radio Reports left Detroit in 1948 to go to Los Angeles, Mr. Cushing gave him the names of certain KMPC people to contact, including Mr. Reynolds (T. 15692). Mr. Nathanson commented about this to Mr. Loomis, President of Radio Reports:

"... I haven't told Lewis this, either, although he asked me about any contacts Radio Reports has had with the Richards stations. Might as well stay out of this thing insofar as possible. I am not making a carbon of this letter . . . " (FCC Ex. 483).

Mr. Nathanson could give no explanation, when asked, as to why he indicated he was not making a carbon of the letter.

108. Again, it is unbelievable that applicants' counsel, who professed that he had an intense desire to locate any "monitorings" of KMPC newscasts for periods when newscasts were not available, did not contact a person who could most reasonably be expected to be able to provide information on this subject, namely, the head of the newsroom for several years at WJR, one of the largest stations in the country.

109. (4) Other employees of KMPC, some of whom were witnesses for applicants, had knowledge of Radio Reports and its activities - In addition to the persons connected with KMPC mentioned above, who had knowledge of Radio Reports and its functions, the following persons at KMPC also knew about and had business relations with Radio Reports.

110. Larry Smith, News Editor of KMPC in 1948 and early 1949, was called as a witness for the applicants and testified on September 18, 1950. The record shows that Mrs. Timmons had called KMPC and had spoken to Larry Smith during the elections in March or April 1949. She asked for information about scripts and programs on KMPC (T. 15397).

111. Fleetwood Lawton, a news commentator over Station KMPC, who testified as a witness for applicants in this hearing on September 11, 1950, knew about Radio Reports, as indicated in Commission

Exhibit 475, which contained a statement that Lawton "would never give us another script" because of some disagreement concerning the manner in which Radio Reports handled its radio digest which it published at that time.

112. James McCulla, the present news editor of KMPC and a witness who testified for applicants on September 27 and September 28, 1950, knew about Radio Reports and its activities. Mrs. Olive Evans Maillot, an employee of Radio Reports, states, in an affidavit (a photostat of which is attached as Appendix D) that in connection with her work at Radio Reports she would call the radio stations that the company monitored for spelling of names or portions of script that would be missed because of machine breakdown or for other reasons. The following is an excerpt from her sworn statement:

".....I remember specifically that in the latter part of 1949 or the early part of 1950 I spoke to Jim McCulla at KMPC to get a news story which had been broadcast when one of the machines was broken down. At that time I told McCulla that Radio Reports was requesting the information for one of the clients that were interested in obtaining it. McCulla said he knew of Radio Reports and was very willing to give the information. He read the news item to me....."

113. The knowledge of the foregoing employees of KMPC is significant in connection with assertions (to be discussed in the next section) by Frampton, an associate in the law firm of applicants' counsel, to Mrs. Timmons to the effect that the hundreds of witnesses they had interviewed had not mentioned Radio Reports to applicants' counsel.

114. Here again it must be found, as in the case of Cushing, that if counsel were as genuinely interested as they profess in locating "monitorings" of KMPC newscasts, they must have discussed the subject with Smith and McCulla, who held top positions in the KMPC newsroom and whom they called as witnesses, as well as with Fleetwood Lawton, a former commentator on KMPC whom they also called as their witness.

115. Miss Dixie Wilkinson, the manager of the Los Angeles office of Radio Reports in 1943, was also working nights at KMPC at the same time as she was employed by Radio Reports (T. 15476).

116. Cecily Malloy, an employee of KMPC, was employed at the same time at the Los Angeles office of Radio Reports (T. 15945).

117. (5) A large number of applicants' witnesses were clients of Radio Reports. - When Frampton first visited Radio Reports and talked to Mrs. Timmons on approximately September 19, 1950--one month before she appeared on the witness stand in Los Angeles--she explained to him about the operation of Radio Reports, and particularly regarding the manner of monitoring programs and selling manuscripts concerning monitored programs. Mr. Frampton told her that "he was amazed"<sup>1/</sup>; that he talked to hundreds of people who were

1/The assertions made by Mr. Frampton to Mrs. Timmons as to his being "amazed" are almost identical with those which had been made by Reynolds to Mrs. Timmons in April 1950. It is most curious, and even amusing, that one was "amazed" because he had been in radio 12 years and had never heard of Radio Reports, while the other was "amazed" because he had interviewed hundreds of witnesses and had never heard about Radio Reports.

going to testify and people that he had interviewed and others and they all said that they had never heard of Radio Reports (T. 15918) .

118. On re-cross examination of Mrs. Timmons, she repeated this statement:

"Q. (By Cottone) Mrs. Timmons did you testify that Mr. Frampton told you that they had interviewed hundreds of witnesses and had not learned from any of them about Radio Reports?

A. Mr. Cottone, Mr. Frampton said they had--meaning the firm--had interviewed hundreds of persons and if I said witnesses I meant people that they were interviewing that they might--that might testify." (T. 15936)

119. If we accept the assertion made by Frampton to Mrs. Timmons at its face value, it must be concluded that Frampton either deceived Mrs. Timmons when he told her that the persons interviewed as prospective witnesses had not told him about Radio Reports, or that the witnesses whom they interviewed and who knew about Radio Reports had deceived Frampton by denying knowledge of Radio Reports. Frampton's own over-anxiety to give Mrs. Timmons the impression that applicants' counsel knew nothing makes it more likely that the former was the case.

120. It has already been shown in the preceding section that a number of employees of KMPC who knew about Radio Reports were called as witnesses by applicants' counsel. A number of other witnesses previously called by applicants' counsel were shown to have been clients of Radio Reports either directly or through business



organizations with which they were connected at one time or another in the past. This was true of the following:

(a) Mr. Eddie Rickenbacker, a witness who had testified for applicants on July 12, 1950 (T. 15941).

(b) Mayor Fletcher Bowron, Mayor of Los Angeles, a witness who had testified for the applicants on September 5, 1950 (T. 15938).

(c) Mr. Cecil B. De Mille, a witness who had testified for the applicants on October 4, 1950 (T. 15937).

(d) Mr. Freeman Lusk, a witness who had testified for the applicants on September 21, 1950 (T. 15941).

(e) Mr. Vincent Richard Smith, a witness who testified as a witness for applicants on September 22, 1950 (T. 15942).

(f) Senator Jack Tenney, a witness who had testified for applicants on October 9, 1950 (App. Ex. 265).

D. Applicants' counsel's assertions that they did not "discover" Radio Reports until about September 19, 1950, are belied by the suspicious circumstances under which they allegedly made this discovery.

121. In applicants' memorandum in support of the Motion to Strike, the contention is made that the first time applicants had knowledge of the existence of Radio Reports was shortly after September 15, 1950, when Miss Lucille Jones, at that time a prospective

witness for applicants, called Radio Reports and spoke to Mrs. Timmons (T. 14564). Mr. Burns re-affirms this contention on the record by stating as follows:

"...When we first learned of that, quite inadvertently, because of his question of Lieutenant-Governor Knight as to whether there was any transcription of an open forum program, and the Lieutenant-Governor said there was none, Miss Lucille Jones, who represented the Uhl Agency, endeavored to find out if there were any, and she called Radio Reports. I don't know how she happened to call them, but she called them. She advised someone at KMPC -- I don't know who it was -- that this organization had some documents or something that had been subpoenaed by the Federal Communications Commission, and I sent Mr. Frampton over there to find out what it was about....." (T. 15882)

122. It is quite apparent from the evidence that neither applicants' counsel nor Miss Lucille Jones had any interest whatsoever in locating scripts or discs of Open Forum. Commission counsel had not asked for the production of any transcriptions of the Open Forum Program when Governor Knight was on the stand. <sup>1/</sup> And, significantly, when Miss Lucille Jones appeared as a witness for applicants on September 20, 1950, no questions were asked of her by applicants' counsel as to scripts, transcriptions or recordings of the Open Forum program. Moreover, it is strange that applicants' desire to obtain scripts of the Open Forum program suddenly developed when Lieutenant-Governor Knight came to the stand. They had known for several weeks that they were going to introduce evidence about this very program. The program was extensively described in applicants'

1/ Commission Counsel merely objected to the competency of oral testimony as to the content of Open Forum programs until proper foundation was laid, stating: "If the statement can be made that the sponsor of the programs does not have the transcription or scripts made from the transcription, we will accept that." (T. 9364)

Exhibit 4 (Sec. 12c), which was marked for identification on July 5, 1950. At that time, counsel apparently had no interest in finding transcriptions of the "Open Forum" program. In any event, counsel's interest in "Open Forum" transcriptions appeared to vanish as suddenly as it developed since Mrs. Timmons was not asked by Lucille Jones to try to find any "Open Forum" recordings (T. 15559).

123. Mrs. Timmons, in a memorandum dated September 15, 1950, to Mr. Nathenson, had the following to say regarding the telephone call from Lucille Jones:

"4. Lucille Jones of Uhl Agency called re Open Forum re KMPC investigation. Next Wednesday she will take the witness stand and quote Emily Timmons of Radio Reports: She will tell Mr. Cottone (investigator) that we made recordings of all Open Forum shows from 1942 on. She will also tell him that the FCC came along and took notes and records KMPC for '46, '47, and up through February 1948. (I do not know whether the Forum records were among these or not.)<sup>1</sup> I do know that we should not have resurfaced any KMPC records until the investigation was over."  
(Item 4, FCC Ex. 513)

124. Mrs. Timmons, under cross examination, testified concerning this telephone call by Miss Jones (T. 15553):

"Q. What date did she call?

A. Well, it says here, 'She called regarding the "Open Forum's" and the KMPC investigations.' She must have called that day.

Q. Do you recall whether she called that day or whether she called the previous day?

<sup>1</sup>No discs of any Open Forum programs were ever taken by the Commission. (See FCC Ex. 477.)

A. No, I don't remember.

Q. Could you tell us as much of the conversation that you had with Miss Jones as you can, Mrs. Timmons?

A. She called and asked about if we had 'Open Forum' records. I told her we did have some and I didn't know how many, and she wanted to know if we had old records, and I said 'no' and I told her that Mr. Lewis had been there and I didn't know whether he took any of them or not, or which ones he took, and she said that it was interesting.

Q. Is that all there was to the conversation?

A. Well, she said someone might call.

Q. Did she say who?

A. I don't believe that first day she called, that she gave me the name. I since learned that it was Mr. Frampton. I thought he was coming in connection with her agency, the Uhl Agency.

Q. You thought she was calling in connection with the Uhl Agency?

A. I thought Mr. Frampton was going to call in connection with the Uhl Advertising Agency in connection with her advertising." (T. 15553 and 15554)

125. Mrs. Timmons testified that Miss Jones told her that she was going to be a witness at the hearing. Witness repeated, on questioning, that Miss Jones asked her whether they had any records covering "Open Forum" but she does not remember whether she was asked to look for any of the "Open Forum" scripts.

"Q. Did she say that she was going to quote Emily Timmons of Radio Reports?

A. I can't remember.

Q. Is that what you said in that memorandum?

A. That is right. That is what I said.

Q. Can you tell us now why you stated that in the memorandum, Mrs. Timmons?

A. No." (T. 15556)

126. Mrs. Timmons, when asked for more details, testified concerning this first phone conversation with Miss Jones:

"A. I can't remember exactly. I know she seemed very much surprised that no one seemed to know whether we had records of Open Forum." (T. 15557)

127. There was further testimony that Miss Jones was interested in getting information regarding the Federal Communications Commission's previous visits to Radio Reports. Miss Jones asked questions regarding the FCC and Radio Reports in 1949. She told Mrs. Timmons that she was going to be a witness for KMPC.

"Q. And did you offer to search for any Open Forum records if she was interested in them?

A. I don't remember definitely. I would have been glad to do it if she wanted me to.

Q. If she had asked you to?

A. Well, of course.

Q. Did you regard her, when she called as a potential client for manuscripts of the 'Open Forum' program?



A. I didn't think about it one way or the other. She is not a client and if she is not a client she is a prospect." (T. 15559)

128. Mrs. Timmons testified that Miss Jones called her two or three days after the memorandum. (FCC Ex. 513, September 15, 1950) had been written.

"Q. Tell us as much as you can remember of that next conversation, Mrs. Timmons.

A. Well, the next time I think she asked if Mr. Frampton had come over to see us, or had called us." (T. 15560)

\* \* \* \*

"Q. Well, just tell us what it was, Mrs. Timmons.

A. I don't know what it was about, except about the hearing. I mean she asked, 'Has he called you or come to see you?' That is about all..." (T. 15561)

129. The assertions as to the reasons why Miss Lucille Jones called Radio Reports on September 15, 1950, have the same false ring as Mr. Reynolds' call in April 1950, to tell Mrs. Timmons that he was "amazed" that he never heard of Radio Reports.

II. The assertions made by applicants' counsel on October 18, 1950 and repeated in their Memorandum to the effect that the Commission's staff had suppressed, concealed and authorized destruction of Radio Reports material have at all times been known by applicants' counsel to be false and grossly deceitful

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A. The evidence clearly shows that there was never any authorization by Commission staff to destroy Radio Reports material.

130. The whole claim of "authorization to destroy" is based upon a letter written on June 16, 1949 to Edward Loomis, President of Radio Reports, by the General Counsel of the Commission and upon certain assertions made by Mrs. Timmons when she was on the witness stand in Los Angeles. The circumstances connected with the sending of this letter are set forth at pages 18 and 19, supra. It is amply clear that all that Commission Counsel did in writing to Radio Reports on June 16, 1949, was to advise Radio Reports that in view of the indefinite postponement of the hearing at that time, we were relieving Radio Reports of the promise they had previously made to hold for the Commission's purposes recordings and notesheets of Los Angeles radio stations except that it was expressly requested that Radio Reports retain those records and notesheets relating to KMPC for the period beginning January 1, 1947. There was never a word of suggestion or prohibition to Radio Reports that they were not free to make any of their recordings or notesheets (including those which

Radio Reports had permitted the Commission to take) available to KMPC or anyone else. Both of the witnesses from Radio Reports who testified on this matter clearly admitted that they so understood what they were free to do.

131. The inconsistency, hypocrisy and deceit behind the claims of Messrs. Fulton and Burns, that we authorized destruction of primary evidence favorable to KMPC in order that it would not be available for KMPC's defense, is laid bare by the very fact that the letter of the Commission's General Counsel specifically requested that Radio Reports retain for our needs recordings and summary sheets pertaining to radio station KMPC made after January 1, 1947. Messrs. Fulton and Burns have at all times conveniently ignored this fact in order to be able to make such dramatic and reckless assertions as -

"... Commission Counsel authorized the destruction of material which they knew was vital to KMPC's defense on issues on which the station would be called upon to fight a life-or-death struggle."  
(Memorandum, p. 14)

132. If the Commission had been desirous of destroying KMPC monitored programs for the invidious purposes alleged by applicants' counsel, what explanation can Messrs. Fulton and Burns offer as to why we specifically requested Radio Reports not to resurface any KMPC material for the period subsequent to January 1, 1947? How do they explain why the Commission did not use a later date such as October 1, 1947, if our purpose was, as Messrs. Fulton and Burns assert, to destroy evidence not otherwise available to applicants?

The position taken by applicants' counsel is so patently absurd that it falls of its own weight.

133. The reason why the date of January 1, 1947, was selected as the date after which we were interested in having Radio Reports retain recordings of KMPC newscasts for our purposes should have been very obvious to applicants' counsel. It was known to them that the bulk of the testimony regarding instructions and distortion of the news occurs in the period after January 1, 1947, when Clete Roberts was employed as Director of Public Affairs at KMPC. Clete Roberts, George Lewin, Maurie Starrels, Larry Thor, Eddie Lyon, Bill Kenneally, all very important witnesses, began their duties at KMPC after January 1, 1947. Important issues such as the handling in the news of the Lilienthal confirmation, the Bugsy Siegal story, the Taft-Hartley Act, Howard Hughes and the Howard Hughes hearing, and others all occurred after January 1, 1947. It will be shown below that the Radio Reports recordings for any period prior to 1946 were of no use whatsoever in view of the impossibility of identifying and locating them due to the lack of notesheets and the disorder in Radio Reports' system of record keeping at its Los Angeles office. While the Radio Reports records for the period after January 1, 1946, were somewhat more orderly, its recordings of KMPC programs were related in the main to non-newscast programs and to programs by newscasters such as Hemingway and Nesbitt who had not given affidavits to the Commission alleging direct instructions to them from Richards (See Appendix F).

The Radio Reports recordings of KMPC programs in 1947 indicated a greater coverage of KMPC newscasts than its 1946 recordings.<sup>1/</sup>

134. At that time there was an indefinite postponement of the hearing and Radio Reports had indicated the financial loss it was suffering as a result of voluntarily complying with the Commission request to refrain from resurfacing records. (App Ex. 266)

135. The logs of Radio Reports which were given to Commission staff (App. Ex. 258) indicated that the earliest<sup>2/</sup> logs of monitored KMPC programs began in January 1947. This is shown right on the first page of this exhibit, in which it is shown what Radio Reports records, notesheets and logs are available.

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<sup>1/</sup> At that time identification of particular KMPC newscasts from Radio Reports notesheets for 1946 and 1947 was virtually impossible because the names of newscasters were seldom shown on notesheets. This is readily apparent from an examination of the notesheets from which applicants used excerpts on pages 149-170 of their Memorandum. It will be seen that except in the case of newscasts by Nesbitt, Hemingway, and Fuller, the name of the newscaster was rarely shown on the notesheet. This failure of identification was especially evident in the 1946 period.

<sup>2/</sup> Mrs. Timmons after testifying in Los Angeles, submitted a sheet (FCC Ex. 451) which purported to be a list of monitored shows in the summer and fall of 1946. This list of programs was reconstructed from papers later found in a previous manager's file and there is great uncertainty as to its accuracy and date (T. 15328 et al). It is attached as Appendix F.



136. The Radio Reports material, particularly that prior to January 1, 1947, was of extremely doubtful value, as will be shown later, for many other reasons not the least of which was the very low coverage of KMPC programs generally and KMPC newscasts specifically. Moreover, of those KMPC newscasts covered, the majority of them were of non-Commission witnesses such as Norman Nesbitt and Frank Hemingway.

147. Much is made by applicants' counsel of testimony of Mrs. Timmons which they characterize as showing a "warning" by an F.C.C. representative that Radio Reports was not to disclose the existence of their recordings and monitoring to KMPC. The record clearly shows that there was never any such warning but, as in many other instances, applicants have distorted the facts to fit them into the pattern of the reckless and untrue charges which they concocted. The actual facts are as follows:

138. When Commission representatives had been permitted to take KMPC notesheets and some discs from Radio Reports, a few days prior to a scheduled hearing in March 1949, it was pointed out at that time, when the question of whether that material could be sold was raised, that it could not be since it was under subpoena. Radio Reports was advised, however, that if the material should be needed, for any purpose, it should contact the Commission and the address of the General Counsel was given to them (FCC. Ex. 516) (T. 14854). This was admitted in an affidavit (FCC. Ex. 516) which was given to Mr. Frampton, (T. 15565) by Mrs. Timmons on September 20, 1950, almost one month

before she was brought to the witness stand and before the contention was made by Mr. Fulton that she had been given a "warning". Also, Mrs. Timmons testified as follows:

"A. I was given a subpoena, yes.

"Q. You understood that that was the reason why you couldn't release it to KMPC, isn't that right?

"A. Yes." (T. 14855)

139. Mr. Si Nathanson, Mrs. Timmons' superior at Radio Reports and who was present on the occasions when the Commission representative was at Radio Reports wrote two reports to the New York office of Radio Reports concerning the FCC visits and of his conversations with the FCC representative (FCC Ex. 482 and FCC Ex. 483). Nowhere does he imply that any "warning" regarding KMPC had been given. On the contrary, Mr. Nathanson when questioned specifically on this point testified:

"Q. Mr. Nathanson, did Lewis tell you not to contact KMPC?

"A. No he did not". (T. 15676)

Mr. Fulton's contention of a "warning" by Lewis, the Commission representative, was based upon an incompetent statement in a letter written by Mrs. Timmons (App. Ex. 265). After hearing Mrs. Timmons' testimony the Examiner stated:

"There is no evidence of any warning that I have heard, Mr. Fulton". (T. 14551)

140. These assertions as to "warnings" by the Commission staff are obviously made of whole cloth. For if the staff had desired to enjoin Radio Reports from disclosing their recordings to KMPC, it would at best have been a foolhardy gesture on our part to "warn" Radio Reports in view of our own knowledge of KMPC's knowledge of Radio Reports. The record clearly shows that Radio Reports did not at all regard itself as having been warned or enjoined in any way by the Commission or its staff from doing with its recordings as it saw fit, including making them available to KMPC. Thus Mrs. Timmons testified that after receipt by Radio Reports of Mr. Cottone's letter of June 16, 1949, Radio Reports was entirely free to do with the recordings as she saw fit and that she had in fact suggested to her superiors that KMPC might be interested in buying the recordings (T 14686-7). There is certainly no suggestion of a prohibition, warning or injunction to Radio Reports in that letter or in any previous letter from the Commission. Applicants' counsel had Mrs. Timmons' affidavit of September 20, 1950 and also they well knew that the whole subject matter of what the Commission was requesting of Radio Reports with respect to its KMPC recordings was covered by written correspondence. Yet, they have distorted oral remarks into something which they knew were never intended as a "warning", pursuant to the general purpose of their whole Memorandum, to "sneer" the Commission and its staff.

141. Applicants' counsel contended, in effect, that Radio Reports resurfaced KMPC recordings only because of the letter of June 16, 1949 and that Radio Reports would not have resurfaced KMPC records if it had not been for such letter. They rely to a great extent on assertions which Mrs. Timmons made in Los Angeles on October 18, 1950, when she was asked whether she regarded that letter as an order or command to resurface KMPC recordings. She refused to answer the question directly but several times stated, in substance, that Radio Reports would not have resurfaced KMPC recordings if they had not received the letter of June 16, 1949 (T. 14881-2).

142. Mrs. Timmons' assertions were later shown to have been completely deceitful<sup>1/</sup>, and applicants' counsel well knew that they were when they relied upon them in their Memorandum. The facts are that Mrs. Timmons was not at all concerned with anything the Commission may have said in deciding when and whether to resurface KMPC recordings. This is shown by the fact that, despite our outstanding request in effect from March 1949 to June 16, 1949 to withhold resurfacing of any KMPC recordings, she had proceeded with resurfacing such recordings before she learned about our letter of June 16, 1949,

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<sup>1/</sup> This statement is made advisedly and notwithstanding Commission Counsel's statement on October 19, 1950 (T. 14888) to the effect that Mrs. Timmons had testified honestly. At that time, we had not yet obtained a great volume of evidence, later placed in the record in Detroit, which showed the lack of candor in some of Mrs. Timmons' previous testimony.

and even after our request of June 16, 1949 asking that KMPC recordings after January 1, 1947 be retained, by her own admission she, did not withhold the resurfacing of such KMPC recordings.

143. Thus, in March 1949<sup>1/</sup>, Mrs. Timmons, upon request of the Commission representative, had called back from resurfacing some 2,000 Radio Reports discs for the years 1942 and 1943 (T. 15454) which she had sent out to have resurfaced. She admitted that in this batch there were some KMPC records which were under subpoena at that time (T. 15455). She had not checked with her New York office for authority to resurface KMPC records at that time (T. 15455). After these were examined for KMPC newscasts, Mrs. Timmons co-mingled these 2,000 discs with records of other years including 1947 and sent them back for resurfacing (T. 15530, 15531).

144. In May of 1949, at a time when Mrs. Timmons knew that Radio Reports had agreed to refrain from resurfacing any KMPC discs, Mrs. Timmons by her own admission proceeded to resurface 3,000 records which included KMPC records (FCC Ex. 489, T. 15526). This was contrary to orders from her New York office (FCC Ex. 484). Mr. Nathanson of the Los Angeles office, after this May resurfacing had taken place, wrote to the New York office on June 6, 1949:

"After a careful chat with Emily about the FCC-KMPC matter, I find myself with the same impression you have: that the FCC has what it needs from this office. However impressions are dangerous things to go on on matters of this sort, as you well know. We have nothing to prove that we may safely resurface all our records and toast marshmallows over our blazing notesheets; while on the other hand, we do have that letter asking Radio Reports not to discard any pertinent material. So I think it would be in order to get from the FCC a written note to the effect that we may dispose of our notesheets and records as we see fit - - -" (FCC Ex. 490)

1/ Mrs. Timmons is not sure whether the resurfacing had taken place during the time Commission representative was at Radio Reports or after he had left.



145. The extent of the deception attempted through use of Mrs. Timmons' assertion that she would not have resurfaced KMPC recordings except for the Commission's letter of June 16, 1949, is shown by the fact that she and applicants' counsel knew that Mrs. Timmons had deliberately permitted resurfacing of KMPC recordings for dates after January 1, 1947, in violation of orders from her New York office and in violation of the specific request in our letter of June 16, 1949.

146. Mrs. Timmons testified that she had received a letter from Colonel Carruth dated June 30, 1949 (ECG. Ex. 433) instructing her to preserve KMPC monitored programs beginning January 1, 1947 in accordance with the Commission's request (T. 15459).

Mr. Cottone asked the witness - -

"Q. (Cottone) Then I assume you were guided by what we requested, is that right, as to what records you would resurface?

"A. Yes, and orders from New York. - - " (T. 15460)

\* \* \* \* \*

"Q. Then, why did you proceed after being advised of my letter of June 16 to resurface 1947 records?

A. Well, for one thing, we needed records. For another thing, in order to pull out KMPC records from all of our records, we would have been doing that and nothing else. That is a terrific job.

Q. Did you check with New York?

A. No, I did not.

Q. Hadn't you been receiving letters from New York throughout this period that you could resurface except those records that the FCC had asked you to retain?

A. That was a terrific job for anybody to ask.

Q. Did you tell New York that was a terrific job?

A. No.

Q. And you did receive specific instructions to retain out of the records you were resurfacing those that the FCC had requested?

A. That is right.

Q. Nevertheless you proceeded, because you thought it was a terrific job of separating?

A. Not only that but we hadn't heard from KMPC or the Commission and the hearing was just about over and we needed more records, and the operators were told to resurface from '42 through '46 and up to '47 in that order, and they did receive some of the '46 and '47 records, but some of the '46 didn't get resurfaced and some of the '47's did. (T. 15460 and 15461)

\* \* \* \* \*

Q. Did you feel it was your authority to do that?

A. No. - - -

Q. Just a minute, to proceed to resurface KMPC records after January 1, 1947, notwithstanding the letters you received from Colonel Carruth to keep those records out?

A. No, it wasn't.

Q. It was not within your authority, and then you proceeded without authority, did you not?

A. By rights, I should have checked through all of them, which would have been a gigantic task and would have taken weeks and cost a lot of money. We certainly wouldn't have saved money . . . ." (T. 15462)

147. Here again, is the complete refutation of applicants' assertions concerning the Commission's "authorization to destroy,"

by the very witness upon whose earlier testimony applicants' counsel predicated their charge. Again, their venality and the falsity and grossly deceptive nature of these assertions is demonstrated by the facts themselves.

- B. The assertions that the Commission staff suppressed or concealed Radio Reports material were known by applicants' counsel to be false and deceitful, particularly in the light of the very content of the Radio Reports material upon which they rely to support these assertions.

148. The false and deceitful nature of the assertions of applicants' counsel concerning our suppression of evidence is proven by the overwhelming amount of evidence showing their full knowledge of the whole subject matter of Radio Reports. (See pages 33-69, supra.) But more than that, an examination of some of the material which they have attached as schedules to their Memorandum Brief and which was marked, but not received, as Applicants' Exhibit 271, shows that applicants' counsel have themselves disproven their own charges. A fuller discussion of the materiality of this whole exhibit is given below but for present purposes two instances will demonstrate the complete absurdity of these charges.

149. (1) The content of the items listed under "Editorials" in Applicants' Exhibit 271. - At pages 136 to 149 of their Memorandum Brief, applicants have quoted excerpts from Radio Reports recordings purporting to be from KMPC newscasts. Counsel argues that since

these items show identification of editorials, it follows that Commission witnesses lied when they testified that upon orders from Richards they did not identify editorials in their newscasts. Except with respect to the item on page 137, to be discussed later, purporting to be from a newscast of Bob Adams (Bob Horn), a Commission witness, none of the items purport to be from the newscasts of any Commission witness. But even if they were, the fact that editorials were identified on a newscast program whose format specifically called for featuring editorials (See Turner's testimony, p. 12969) does not at all prove that, in other newscast, editorials were not read, pursuant to orders from Mr. Richards, without labeling. But the absurdity of counsel's whole position on this is illustrated by the fact that they did not excerpt items from any disc where an editorial was not identified as an editorial. Here, we attribute no venality to applicants' counsel, since we will concede that neither they, nor anyone else, including ourselves, could very readily prove from a disc that it contained an editorial which was not identified as an editorial. We will concede that the very absence of identification on the disc will make it difficult if not impossible to detect that it was an editorial. And we will further concede that we might be deceived into thinking an unidentified editorial was part of the current news of the day, which is precisely the manner in which Mr. Richards intended to deceive listeners when he ordered his newscasters to read editorials without identification.

150. But an examination of even the series of editorials applicants' counsel has presented on pages 136 to 148 of their Memorandum Brief shows a pattern so clearly in line with the types of instructions which so many newscasters testified were given by Mr. Richards that it is absurd for counsel to contend that we would have had any interest in suppressing these items, particularly if we were as determined, as they imply we were, to use every conceivable scrap of evidence which was unfavorable to Mr. Richards.

151. Thus the item for October 2, 1946 (p. 136, Memorandum) confirms the instructions which Richards gave to criticize OPA and price controls.

152. The item for October 4, 1946 (p. 136) Memorandum) is critical of the Housing Administration's failure to provide veterans homes in the Los Angeles area.

153. The item for October 9, 1946, (p. 138, Memorandum) is commendatory of the Republican Party's foreign policy position, and critical of Henry Wallace and the "left wing element of the Democratic Party".

154. The item for October 17, 1946, (p. 138, Memorandum) deals with a Gallup Poll unfavorable to President Truman, and is in general highly critical of President Truman, President Roosevelt and the Democratic Party.

155. The item for November 14, 1946 (p. 139, Memorandum) is another critical of President Truman.



156. The item of November 15, 1946 (p. 140, Memorandum) is another which is highly unfavorable to the Democratic Administration in connection with the victory of the Republicans in the Congressional elections of 1946. The item concludes with a reference to the rejection of "New Deal Communism" by the people on November 5, a reference clearly in line with Mr. Richards' instructions to newscasters.

157. The item of November 20, 1946 (p. 143, Memorandum) is one urging "overhaul of the Wagner Act". This is significant in connection with Mr. Richards' instructions concerning the Taft-Hartley Act.

158. The item of December 6, 1946, (p. 145, Memorandum) is one quoting Senator Bridges and dealing favorably with the Republican Party's program for retrenchment in federal spending and tax reduction, and unfavorably with the policy of New Deal Congresses for "profligate expenditures".

159. The item of December 30, 1946, (p. 146, Memorandum) is one which, in strong language, is critical of "the burlesque government in Washington" and "the labor union racket".

160. It is more than apparent that by their own act of selecting these items, applicants' counsel have effectively corroborated rather than contradicted the testimony of Commission witnesses and have in any event disproven their own assertions of "suppression and concealment by Commission counsel" of evidence favorable to applicants. The absurdity of their claims is clear.

161. (2) The Hemingway incident. - Messrs. Fulton and Burns go to some pains, (p. 49, Memorandum) to try to show that testimony given by the Commission witnesses Lyon and Starrels is contradicted by an item in a Radio Reports recording (p. 147, Memorandum) purporting to be from a newscast on March 27, 1947, of applicants' witness, Hemingway. Applicants' counsel correctly states that the Radio Reports notesheet covering this item was in Commission counsel's possession at the time Lyon and Starrels testified, but charges that we suppressed the item during their testimony. By the same token we must have suppressed the item at the time Hemingway testified as their witness.

162. The item relied upon concerned an article from the Reader's Digest which was included in Hemingway's newscast and identified by Hemingway as coming from the Reader's Digest. Counsel makes the contention that this record, if it had been available to them, would in some unexplained way have contradicted Lyon's and Starrels' testimony that Mr. Richards ordered the use of this article from the Reader's Digest to be used in the newscasts. The point of both Lyon's and Starrels' testimony about Mr. Richards' orders on this matter did not concern the question of the identification or non-identification of the item as an editorial, but went to the question of the propriety of including in a newscast a magazine article, condensation of a book which in no sense was news.

163. But not only did they deliberately distort the purpose of the testimony of Lyon and Starrels ~~in their~~ contentions regarding this Hemingway item, but in their anxiety to distort, they so far overreached themselves that they have succeeded in further impeaching the testimony of their own witness, and in corroborating the testimony of the Commission's witnesses, Roberts, Lyon and Starrels.

164. With respect to the Reader's Digest incident, Roberts testified that he had quite a discussion with Mr. Hemingway concerning a Reader's Digest article "Slave labor in Russia." He stated Mr. Hemingway quite heatedly had asked Roberts "what in the world we were trying to do in his news broadcasts, and he referred particularly to a rather long news -- feature piece, I imagine you would call it -- having to do, as I remember with slave labor in Russia. I believe it was an excerpt from the Reader's Digest." Roberts said he told Hemingway that Mr. Richards called and wanted it on the newscasts. According to Roberts, Hemingway made it clear that he wouldn't stand for that sort of thing. Roberts couldn't remove it from the newscast because it was there on direct orders from Richards. He told Hemingway to speak to the advertising agency about it and have the advertising agency complain through the sales department. A few days later Hemingway told Roberts he had talked to Dick Smith about the article, and that the agency had told Hemingway to advise the station that they wouldn't stand for that sort of thing (T. 6010, 6011).

165. On this same subject, Lyon recalled an instance in which an item from the Reader's Digest was taken concerning slave labor in Soviet Russia. He said he was instructed by Mr. Richards to use it in its entirety on one of his newscasts. He testified he rewrote the item so that it ran about three pages and inserted it as a news item on his newscast (T. 4117). Lyon said nothing about identification or non-identification of this item as an editorial.

166. Also on this same subject, Starrels testified that he had a conversation with Mr. Richards concerning an article in the Reader's Digest. He was told to prepare and to include in a news-script to be read by Frank Hemingway a re-write article of a condensation of a book from the Reader's Digest in reference to slave labor in Russia. Starrels testified he was told to make a digest of the digest and put it in the newscast and to use three or four minutes of copy for this item which he did (T. 3421). Starrels said nothing about identification or non-identification of this item as an editorial.

167. When Hemingway was brought to the stand, his appearance was heralded with hintings by counsel for the applicants that this was to be the occasion for laying before the Examiner an example of how Commission counsel had "suppressed" evidence favorable to the applicants and Mr. Richards. Mr. Burns went to great pains to elicit from Mr. Hemingway assertions that Mr. Richards had never given this or that order testified to by Commission witnesses,

and that Hemingway had never heard any of the things which Commission witnesses had attributed to Mr. Richards. Mr. Burns, with calculated persistence, questioned Mr. Hemingway about the incident testified to by Roberts. At first, Hemingway cautiously failed to recall such an incident. Mr. Burns was not to be denied, however; he went at Mr. Hemingway again. Didn't Mr. Hemingway mean to say that no such incident had ever occurred rather than that he didn't "recall" it. Again Mr. Hemingway was cautious in his answer. But again Mr. Burns was not to be denied the answer he wanted, and again he tried to wring from Hemingway a flat denial of the incident to which Roberts had testified. This time, undoubtedly in sheer desperation, Hemingway yielded to Mr. Burns and swore that, positively no such incident or discussion with Roberts ever occurred. (T. 8808-8812)

168. Mr. Burns then had Hemingway recite the fact that Hemingway had given an affidavit to Commission investigators in 1948, with the inference that the affidavit was favorable to Mr. Richards, but nevertheless Commission counsel had failed to call him as a Commission witness, inferentially because we did not wish to have any evidence favorable to Mr. Richards in the record.

169. All of counsel's innuendoes that Commission counsel wanted to suppress testimony of Mr. Hemingway which was favorable to Mr. Richards were almost immediately exploded the moment cross-examination of Hemingway began. Hemingway was confronted with the affidavit which he had given to the Commission in 1948. Almost



without exception, the assertions which Hemingway had made under direct examination denying instructions from Richards to newscasters were flatly contradicted by the sworn assertions he had made to the Commission in April 1948 (FCC Ex. 293).

170. In this context, it is almost ludicrous for applicants' counsel again to try to use Hemingway in connection with charges of suppression. They did not gain from the experience of having once been "burned" by Hemingway. For, the item from Hemingway's newscast of March 27, 1947, used to support their contention of suppression, shows, on the contrary, that if we had been disposed to suppress only things favorable to applicants, this recording would hardly have been one for us to suppress, since it not only gives the lie to the assertions wrung so tediously from Hemingway by Mr. Burns, but it corroborates in every respect the testimony of Roberts, Lyon, and Starrels.

C. Applicants' counsel connived in the falsification of the facts on the question of what recordings of KMPC newscasts had actually been resurfaced

171. It is important to note that at no time before making their attacks on the Commission staff did applicants' counsel ever develop the definitive facts showing what recordings of KMPC newscasts, if any, were ever resurfaced. On the contrary they knew a number of facts which showed the falsity of a number of statements upon which they predicated the sweeping assertions in their Memorandum as to the KMPC recordings which were allegedly destroyed in alleged pursuance of the Commission's letter of June 16, 1949.

172. In their Memorandum (p. 14), counsel relied on the following testimony given by Mrs. Timmons in Los Angeles on October 18 and 19, 1950 which they knew to be incorrect:

"Thereupon," Mrs. Timmons testified, "we resurfaced records from '42 to '46 and discarded notes." (T. 14540)

"We discarded (notes for) '46, '47 and '48." (T. 14541)

"We resurfaced records from '42 through '45, '46. We may have a few left from '46." (T. 14786)

173. On November 24, 1950, in Detroit, Mrs. Timmons testified that since making the foregoing statement in Los Angeles she made a check and discovered about 6,500 discs (13,000 recordings) of which 1,000 were KMPC recordings for 1946 and 1947 (T. 15179-15180). This

checking began about November 3, 1950, by "about seven of our older experienced employees" (T. 15179). The Memorandum in which applicants' counsel relied upon Mrs. Timmons' testimony as to what she had resurfaced was filed on November 21, 1950. No mention of this "discovery" of 1,000 KMPC records was made in the Memorandum although it is apparent applicants' counsel knew about it prior to November 21, 1950.<sup>1/</sup> Worse still, knowing about the existence of this large quantity of KMPC recordings, applicants' counsel deliberately falsified the facts in asserting in their Memorandum (p. 4) that, after the Commission's letter of June 16, 1949, "Radio Reports resurfaced and destroyed all discs" which remained in the possession of Radio Reports for any stations for the period prior to January 1, 1947.

174. There is additional evidence that in addition to the discovery of these records there are still available other KMPC records in the 1946-1947 period. Olive Evans Maillett, an employee at the e

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<sup>1/</sup>Applicants' counsel took pains to include, as a footnote, (p. 7-8, Memorandum) the first retraction of Mrs. Timmons dated November 11, 1950, regarding the 2,000 discs resurfaced in March 1949, concerning which she had testified so carelessly.



A. Oh, then we resurfaced records from '42 through '46 and discarded notes.

Q. And, by 'resurface,' you mean you went through this mechanical operation whereby the transcribed material as to what you had monitored from '42 through '46 was destroyed and no longer made available so it could be played back?

A. That is right.

Q. And with respect to the note sheets that were similarly destroyed, what years did they cover?

A. We didn't have notes from '42 through '45. We had already destroyed those. We discarded '46, '47 and '48." (T. 14540-14541)

176. Here, as applicants' counsel knew, were obviously untrue assertions by Mrs. Timmons with respect to the destruction of notesheets for the years 1946, 1947 and 1948. Both Mrs. Timmons and applicants' counsel knew from the very receipts which had been given by the Commission to Radio Reports, their own exhibits, (App. Ex. 262-263) that we had notesheets for 1946, for all of 1947 and through February 1948 (FCC. Ex. 477).

177. Applicants' counsel knew this part of Mrs. Timmons' testimony to be obviously wrong and yet they relied heavily upon it in their Memorandum. But when Mrs. Timmons returned to the stand in Detroit some weeks later, it became apparent that she had been even more reckless in her assertions. In Detroit she admitted she knew before she had testified in Los Angeles that Radio Reports had the



rest of the 1946 KMPC notesheets (T. 15173) which had not been taken by the Commission in March 1949. She showed these 1946 notesheets to Mr. Frampton three or four weeks before she testified in Los Angeles (T. 15948). She testified that she later, at applicants' counsel's request, segregated the KMPC notesheets from the non-KMPC notesheets (T. 15174). Yet they said nothing about these additional notesheets in their Memorandum although they knew about them (T. 15947). We have here a perfect illustration of the connivance and duplicity of applicants' counsel!

178. It was developed on the record in Detroit during Mrs. Timmons second appearance on the stand that Radio Reports in Los Angeles had no filing system at all with respect to its discs, kept no written records or inventories of discs on hand or discs resurfaced, or, of the dates when discs were resurfaced (T.15539). Nor was there any reliable system for determining what particular programs of what particular stations had been recorded. There was therefore no reliable way of determining just what Radio Reports ever did have by way of recordings of KMPC newscasts.

179. It was only by reference to correspondence in Radio Reports files that some information was obtained as to recordings which were on hand or resurfaced as of any given period. One thing was perfectly clear from this correspondence; as of the time of the phone

call made by Reynolds to Radio Reports in April of 1950. Radio Reports had not resurfaced its 1946 records. (FCC. Ex. 495, 498, 501, 534) (T. 15163, 15166, 15168, 15544). Indeed, Mrs. Timmons testified that a group of 3000 to 4000 records which were resurfaced in February 1950 (FCC. Ex. 496) were records prior to 1945 (T. 15542-15545). She stated further "that any records we resurfaced up until around the first part of 1950 would have been prior to 1945" (T. 15539). This evidence clearly refutes the inference sought to be created by Mr. Fulton that Radio Reports' resurfacing of records for the period 1942 to 1947 followed closely upon receipt of the Commission's letter of June 16, 1949. This inference was contained in the assertion on page 14 of their Memorandum:

"Thereupon, Mrs. Timmons testified, 'we resurfaced records from '42 to '46 and discarded notes'". (Underlining supplied).

The disingenuousness of this assertion is apparent.

D. The entire conduct of applicants' counsel indicates that they had no interest in Radio Reports material for any evidentiary use related to the issues in the proceeding.

180. Mr. Burns, one of applicants' counsel, admitted on the record that the extracts from Radio Reports discs and notesheets which had been included in their Exhibit 271 (which is the same as Schedules A, B, C, and D of their Memorandum, pp. 56-185) were not material to any of the issues in the proceeding but were only related to their Motion to Strike (T. 15864).

181. "Destruction, suppression and concealment" are strong words. As indicated above, it was evident to applicants' counsel that there was no reliable way of ascertaining what Radio Reports actually had in the way of recordings of KMPC newscasts or what newscast recordings, if any, were destroyed. But applicants' counsel made not the slightest effort to check the records and material at Radio Reports before they made these charges on the record and to the press.

182. Let us even assume, as they allege, that applicants' counsel first found out about Radio Reports on or about September 19, 1950. At that time, there was every reason for them to believe that the Los Angeles hearing would continue to November or December and not end on October 19. At that time they were making assertions that they had many additional reputation witnesses to present. They, therefore, had ample opportunity to make whatever specific request they deemed necessary, either upon Radio Reports or the Commission, for any Radio Reports material which the Commission was holding if they were sincerely interested in obtaining the material for any evidentiary purposes. They had every opportunity to check to see what Radio Reports actually had at their offices which they desired to use before bringing Mrs. Timmons to the stand

and making these reckless charges' <sup>1/</sup>.

183. No specific request for this Radio Reports material was made until after they managed to make these false charges on the record and in the press one month later. It is apparent that they were more interested in trying to prove the Commission staff to be guilty of misconduct than they were in the Radio Reports material per se. The interest of Frampton at the time of his first visit to Radio Reports was the correspondence which would establish the contacts that the Commission had with Radio Reports (T. 15947). Mrs. Timmons, during Frampton's first or second visit told him that Radio Reports had part of the notesheets for 1946 and had taken out a few and showed them to him (T. 15948). Frampton did not ask to examine the rest of them nor did he inquire how many of them were KMPC notesheets. Nor did he ask for a written inventory of what notesheets were available (T. 15950).

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<sup>1/</sup> Applicants' counsel could not justifiably have assumed that it would have been futile to seek or look for any material which might have been helpful to them. In fact, after counsel did obtain the material in the possession of Commission counsel and the large quantity of KMPC material that Radio Reports suddenly discovered, they were forced, willy-nilly, to examine that material. They then found themselves contending that "the recordings still in existence conclusively disprove the secondary evidence (of Commission witnesses) offered." If that contention is correct (we will show it is not), there is really no purpose in counsel contending that the testimony of the Commission's witnesses should be stricken because by placing the recordings in evidence, (if they are admissible) any alleged prejudicial effect of that testimony will presumably have been overcome.

184. Mrs. Timmons testified that she showed Mr. Frampton, on October 17, 1950, the day before she went on the witness stand in Los Angeles, a box of records at Radio Reports and said: "Well there are the records that we have that I believe are 1946 and 1947" (T. 15951). Also, "I told him that there might be some KMPC records among them. I didn't know how many." (T. 15952) Mr. Frampton at the time, prior to her going on the stand, did not ask her to give any kind of an estimate or check as to how many KMPC records might be included in the group. (More than 1,000 KMPC discs were later discovered in this group--after Mrs. Timmons had testified that the recordings were destroyed.)

185. Mrs. Timmons testified that prior to the time she went on the stand no check of any kind had been made to ascertain how many of the 13,000 recordings for the years 1946 and 1947 were KMPC records. It was only after she had testified that applicants' counsel (approximately October 5, 1950) made any effort to find out how many of this group were KMPC records (T. 15571).



III. The request of applicants' counsel for a subpoena to Commission counsel to produce Radio Reports material is sham and frivolous since the record clearly shows that all Radio Reports material had been produced in Los Angeles on October 19, 1950.

186. In order to create an inference that Commission counsel was withholding Radio Reports material, applicants' counsel specifically requested that a subpoena duces tecum be issued to the Commission's General Counsel.<sup>1/</sup> Insinuations have been made by applicants' counsel at various times that the Commission staff was withholding material (Memorandum, pages 10, 11, 12). All of these insinuations are false because the record positively shows that all material which Radio Reports had submitted to the Commission staff was turned over to the custody of the Examiner on October 19, 1950.

187. By the admission of Mrs. Timmons, the receipt given by the Commission for the Radio Reports material was correct (T. 15958). It was further testified by Mrs. Timmons that at the time the material was returned to Radio Reports, Lewis, the Commission representative, offered to give an itemized receipt of what was returned

1/ Mr. Fulton's propensity for demanding the issuance of subpoenas to every conceivable Commission personality was well illustrated in a number of instances. Thus, at various times he insisted most vigorously upon the issuance of subpoenas to each Commissioner of the Federal Communications Commission. At one point he made the request, in effect, that Examiner Cunningham should issue a subpoena to himself, in order that Mr. Fulton could cross-examine him (the Examiner) as to the Examiner's qualifications to hear and decide the issues in the proceeding. His request for subpoenas to the Commissioners was for the same purposes.

and what the Commission still held (T. 14847, 15959): but he was told by Mrs. Timmons that it wasn't necessary. Applicants' counsel has conceded that 300 discs were turned over to the Examiner on the last day of the Los Angeles hearing (T. 15958) and later given to applicants' counsel. (Comm. Exh. No. 477) Counsel had every opportunity to have the returned material checked by Mrs. Timmons or other representatives of Radio Reports so they could satisfy themselves that no material had been withheld. They had no interest in doing so, but preferred to press for a subpoena to the General Counsel so they could make their insinuations more effectively. Mrs. Timmons testified that applicants' counsel had never asked her to go through the notesheets to ascertain whether that material constituted all the material Radio Reports had permitted the Commission's representative to take (T. 15959).

IV. The assertions of applicants' counsel on the record that Commission counsel concealed the subpoena issued to Radio Reports in March 1949 are false and grossly deceitful and were deliberately designed to mislead the Examiner.

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188. Applicants' counsel made a great deal out of the fact that they were not able to find in the Commission's public files the subpoena issued to Radio Reports by Commissioner Webster in March of 1949. Mr. Burns stated: (

"The record indicates that a subpoena duces tecum was given to Radio Reports covering the material which the Commission took away. According to Commission rules, a written request should have been made for such a subpoena showing the materiality. A return should have been made which would have been in the Commission's docket where any other interested parties to the controversy or investigation could see what subpoenas had been outstanding and served.

"The other day I stated here on the record that our study and examination of the Commission dockets disclosed no such written request and no such subpoena. We requested Mr. Cottone to produce such records and to let us see them. He has failed to do so. That is one of the elements, only one of the elements which show the concealment by Commission counsel in an effort to conceal the existence of these records." (T. 16008) (Emphasis supplied)

These words should be weighed carefully. They were made during the hearing in open court on the record and to the press. Here Commission counsel is charged with deliberate concealment of a document in an effort to conceal the existence of Radio Reports. Let us examine the facts regarding this matter.

189. Applicants' counsel refers to a subpoena duces tecum served on Emily Timmons of Radio Reports on March 5, 1949. This subpoena was signed by Commissioner Webster who at that time was the commissioner appointed to hear the investigatory hearing (Docket 9193) which was scheduled to begin on March 16, 1949, in Los Angeles. Applicant's counsel had obtained a copy of this subpoena from Radio Reports' office in New York which was introduced into evidence as Applicants Exhibit 261.

190. Mr. Burns apparently desired to find out whether any request in writing had been made for the issuance of the subpoena. What he expected to contend, if in fact no written request had been made, is not clear. Be that as it may, we can enlighten him to some extent on this score. We have been unable to find a written request made to Commissioner Webster for this subpoena and are willing to concede that we did not prepare such a request. We will even voluntarily inform Mr. Burns that the Radio Reports subpoena, as well as other subpoenas- duces-tecum obtained from Commissioner Webster in the investigatory proceeding (Docket No. 9193) were not obtained by written request. Counsel went to great trouble to seek out still another way to smear the Commission (in this case Commissioner Webster) and Commission Counsel. With the expenditure of far less effort, he could easily have found out, by looking at the Commission's Rules that in the kind of proceeding in which Commissioner Webster issued the subpoena

at the General Counsel's request (an investigatory proceeding of an ex parte nature) the rules with respect to written requests for subpoenas-duces-tecum are not applicable. (See Sec. 1.801).

191. Counsel's frustration over their completely exploded plot on this whole Radio Reports matter must be keen indeed when they must stoop to a claim that there was something **invidious** in this subpoena because he could not find it in the Commission's docket. Again, if Mr. Burns had had a genuine interest in finding out why he could not find it in the public files of the Commission, he would have found the answer in the Commission's Rules. The short answer is that the subpoena did not belong in the docket. Had Mr. Burns examined the provisions of Sec. 1.834(b) he would have seen that even subpoenas issued in formal proceedings are not required to be placed in files open to public inspection. That rule merely requires the original to be "returned forthwith to the Secretary of the Commission, or, if so directed on the subpoena to the official before whom the person named in the subpoena is required to appear," and if counsel had examined 0.206(c) of the Commission's rules, he would have learned that subpoenas are not included among the types of documents included in the docket of a formal proceeding which are open to public inspection. Finally, by examining Section 0.206(d), he would have learned what the proper procedure is for obtaining inspection of documents in the Commission files which are not specified as open to public inspection.



- V. Assuming that recordings and notesheets of Radio Reports could be properly authenticated as KMPC newscasts given by particular newscasters at specified times, they were without evidentiary value in relation to the specific issues in these proceedings

- A. The failure of applicants' counsel to establish competency.

192. Various questions exist as to the competency of the Radio Reports material which applicants sought to rely upon. Some of these questions go to the failure of counsel to properly authenticate this material as being from KMPC newscasts of specified newscasters at a specified time. This problem of failure of authentication was not an inherent obstacle to their introduction, for counsel could have proceeded in a proper manner to authenticate them instead of following a procedure which left the authenticity of the excerpts in doubt.

193. The chief problems of competence of the Radio Reports material in so far as the issues of this proceeding are concerned are, first, that they could not possibly, as asserted by applicants' counsel, be considered primary evidence; and, second, the very inadequacy of the general coverage of KMPC newscasts by Radio Reports made those discs covering some newscasts of doubtful competence; third, the discs of newscasts of non-Commission witnesses were undoubtedly incompetent for the purposes of contradicting or disproving Commission witnesses.

194. Applicants' counsel in the Memorandum states that "the disks constituted primary evidence of even greater probative value than the scripts themselves, and certainly of a higher order than testimony, on the issues in these proceedings." (P. 7, Memorandum) This is not only erroneous but is completely at variance with their previous statement that the news scripts are the primary evidence in this case. It is shown in the Proposed Findings of the General Counsel, and the record clearly establishes, that Station KMPC, at the time the charges against the station were filed, had news scripts available which went back at least as far as January 1, 1947. The evidence showed most clearly that shortly before Commission investigators arrived at the station in April 1948 these scripts had been destroyed, as were portions of scripts for the period after September 29, 1947. (See Proposed Findings of General Counsel, pp. 82 -99). Applicants can hardly use their own act of destruction of "primary evidence" as a basis for relying upon something else as "primary evidence".<sup>1/</sup>

195. The issue in this case is whether or not certain types of instructions were given by Mr. Richards in connection with newscasts and the extent, if any, to which they were carried out (T.15871).

196. Therefore, in so far as execution of Richards' instructions was concerned, the question was whether the news scripts or discs would best show whether and in what manner newscasters carried out instructions from Richards. There can be no disputing the fact that the best evidence was the news scripts themselves, prepared by the

<sup>1/</sup> In various assertions made by applicants' counsel in their Memorandum (pp. 19-21,28) are directed to a number of statements made by Commission Counsel with respect to the unavailability of KMPC scripts and their

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1/ Continued

destruction by the station. The implication is that those statements of Commission Counsel were untrue because of our knowledge of the existence of Radio Reports discs. The above answer to these assertions is that it was and is entirely true, and we still contend that many news scripts of KMPC were not available because they were destroyed by the station after the charges became public. The fact that Radio Reports had discs of some KMPC newscasts does not make that contention untrue.

witnesses who received the instructions, showing their own notations, or notations as to orders from Richards, deletions of wire copy material, clippings from newspapers, the extent of rewrite of wire copy, and various other indicia which could only be seen from examination of the news scripts themselves. Such information could not possibly be obtained from listening to discs. Some examples of the manner in which the news scripts which were available served to show instructions from Richards and how they were carried out will be illuminating:

1. Scripts would show when news clippings were used in newscasts; discs would not.
2. Scripts would show when items were tabbed with notations that Richards had ordered repetitious use of the item; discs would not.
3. Scripts would show deletions of significant words or portions from wire copy and insertion of other significant words in pursuant to the techniques of omission and deletion as ordered by Richards; discs would not.
4. Scripts would show the presence of editorials in newscasts in cases where they were not identified; discs would only prove the cases where the editorials were identified. (See supra p. 82)





5. Scripts would show the extent of rewriting of wire copy done to satisfy instructions from Richards; discs obviously could not show this.

<sup>1/</sup>  
198. The foregoing examples may be more vividly illustrated by actual instances developed in the record where the execution of orders was reflected by the available scripts where it could not have been shown by discs. A disc would not disclose, in the case of the Margaret Truman item, a handwritten notation "Use on all Saturday newscasts", reflecting Mr. Richards' instructions (Proposed Findings of General Counsel, pp. 104 to 107); nor would a disc disclose the notations which many witnesses testified appeared on scripts, such as: "This is a must. G.R." --or "Use on the 8 p.m. newscast. G.R." -- and other such comments (Proposed Findings of General Counsel, p. 75, 88, 99, 108). A disc would not have shown that the word "Jews" was crossed out of wire copy in a news script and the word "inmates" substituted for the apparent reason that the particular

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<sup>1/</sup> There is no paragraph 197.

wire copy story might otherwise arouse sympathy for Jews and its broadcast in that vein would have been contrary to Mr. Richards' instructions in the matter (Proposed Findings of General Counsel, p. 112 ). Similarly, a disc would not have shown that, as ordered by Mr. Richards, in cases where the wire copy referred to General "Bennett" Meyers the newscasters would cross out the word "Bennett" and put in the word "Benny" (Proposed Findings of General Counsel, p. 109).

199. The second aspect of the problem of competency of the Radio Reports discs, namely, the inadequacy of coverage of KMPG newscasts, is indicated by the following facts.

200. The selection of programs to be monitored by Radio Reports is based primarily on the interests of its clients. An examination of the logs of the company and an analysis of the notesheets reveals that a great number of the monitored programs are non-newscast programs and include such programs as home chats, business news, sports reviews, commentaries and programs broadcast by personalities such as Mayor Bowron. As between newscasts and news commentaries, the preference of Radio Reports is to the monitoring of the commentary type of program (T. 14874).

201. The company is not equipped to take full coverage of programs of any one radio station in the Los Angeles area. Its practice is to get as wide coverage as possible of the 20 radio stations in the Los Angeles area which means getting a scattered number of programs from each of the radio stations. Radio Reports has only

been able to monitor a part of all of the newscasts of any single radio station in the Los Angeles area (T. 14905), and makes no claim of coverage of the news of any station. The only logs of Radio Reports available for the period prior to 1947 (FCC Exhibit 451, Appendix F) which reflects the scheduled monitorings of KMPC through the summer and fall of 1946 list only two newscasts out of thirty-three scheduled weekly. Programs are dropped according to the shifting interests of their clients (FCC Ex. 503) and, as indicated, coverage of any one radio station and of its news programs is limited (T. 14873). In addition to the limitations imposed of necessity by the number of stations in the Los Angeles area and by the requests of clients for particular programs, all of which are reflected on the proposed monitoring logs of Radio Reports, other limitations further hamper coverage by this organization. The history of Radio Reports indicates a shortage of machines (FCC Ex. 475, 476), both of radio receivers (FCC Ex. 471) and of soundscribers (FCC Ex. 470), to record the program.

202. Correspondence shows that for considerable periods of time there were only two radios (one of which was borrowed) and two or three soundscribers (FCC Ex. 471) at least one of which was always in need of repair (FCC Ex. 550, 552). In addition, the machines broke down on frequent occasions and programs were missed during the interim (FCC Ex. 470, 452, 453, 458). Poor business occasioned further cut in the coverage of the limited monitored programs

indicated in the logs of Radio Reports (FCC Ex. 500). The number of monitored programs was sometimes cut down to save expenses (FCC Ex. 556).

203. In view of the scattered and incomplete coverage by Radio Reports of KMPC newscasts, particularly newscasts by Commission witnesses, the competency of the available discs is seriously questionable. It has already been shown how, because of the lack of any system in the Los Angeles office of Radio Reports for keeping of inventories of recordings, it is impossible to ascertain what recordings, if any, were ever resurfaced. Upon the question of the extent of monitoring coverage of KMPC newscasts, the same situation made it impossible to determine what Radio Reports ever had by way of recordings, particularly between the years 1942 and 1946.

204. The situation was described by Mr. Tom Kelly, who in early 1946 was sent by the New York headquarters of Radio Reports to the Los Angeles office. Mr. Kelly, in reporting to New York on March 18, 1946, commented on the uselessness of recordings prior to 1946 when because of careless filing and several movings of the office, it was extremely difficult to locate any old records. Mr. Kelly added, "For the good of all concerned, I hope we never get a call for one of the old programs." (FCC Ex. 555).

205. Nevertheless, applicants' counsel sought to create the impression that Radio Reports had had large quantities of recordings of KMPC newscasts between the years 1942 and 1946, when they

knew that there was no conceivable way in which anyone could have ascertained just what KMPC newscasts Radio Reports had monitored in that period. Thus, Mr. Burns in oral argument made the completely unfounded statement (T. 16021):

"The motion is related to the period of testimony from July, 1942 to September 29, 1947 because that is the period for which Radio Reports has testified they recorded never less than three and as many as eight KMPC newscasts per day. Since the number of broadcasts varied from 11 to 18, it is quite evident that those recordings that Radio Reports had were a very substantial sampling of KMPC newscasts and would have been of tremendous value if they were available to the applicants." (Emphasis supplied)

206. When Commission counsel's objection was sustained to a speculative guess by Mrs. Timmons as to the number of KMPC newscasts monitored by Radio Reports, Mr. Fulton made a false offer of proof that from "40 to 50 per cent of the newscasts of Station KMPC" were being monitored by Radio Reports during the period from 1942 to 1947 (T. 14550).

207. When pressed by Mr. Fulton to disclose how they could estimate the number of records Radio Reports had, Mrs. Timmons testified: "We have logs. We could tell you how many broadcasts we took from our logs, except perhaps if a machine broke down or a program was dropped that day." (T. 14900) All Mrs. Timmons' testimony was based on her estimates without attempting to check the logs or available records. Mrs. Timmons had originally (when the

the F.C.C. investigator visited Radio Reports in March 1949) stated that there were no logs available prior to 1947 (Appl. Ex. 258). Since her testifying on the stand in Los Angeles, she constructed another log (FCC Ex. 451) of Radio Reports showing:

"Programs Monitored During the Summer and  
Fall of 1946" (Copy attached as Appendix F)

208. This represents the only log at Radio Reports which according to their witness, Mrs. Timmons, was available for the period prior to January 1, 1947. This shows that of the thirty-three programs of KMPC monitored weekly during this time only two were newscasts and one of the two newscasts was by Frank Hemingway who was not a Commission witness. The other monitored newscast was on Saturday morning 8 A.M. which may or may not have been broadcast by a Commission witness.

209. Mrs. Timmons had testified that starting in 1942 Radio Reports monitored at least three KMPC newscasts and that this number increased until just before 1947 eight newscasts were being monitored. From her own logs, this statement is obviously erroneous.

210. An analysis of notesheets of Radio Reports for the period January 26 to April 12, 1946, which were at all times, until the hearing in Detroit, in the possession of Radio Reports, shows the following: Of the 77 days covered, there were 140 KMPC monitored programs--or less than two a day. Of the 140 monitorings, 46<sup>1/</sup>

<sup>1/</sup> 28 of these were midnight newscasts listed on at least one occasion as "Editor of the Air" programs--and conceivably could have been non-newscast programs.



were identified as newscasts, which would be less than one a day. Of the 46 newscasts, only one <sup>1/</sup> could be identified as made by a Commission witness from the listing of the notesheets.

211. Despite the foregoing information, available to Mr. Fulton for the asking, indicating the incompleteness of Radio Reports coverage of KMPC newscasts, Mr. Fulton made the untruthful assertion in his offer of proof that 40 to 50% of the newscasts of KMPC were being monitored by Radio Reports during the period 1942 to 1947. Applicants' counsel had all the available notesheets covering the years 1946 and 1947 in their possession for a considerable period of time prior to the filing of their Memorandum. Most significantly, they failed to try to ascertain from those notesheets just what KMPC newscasts were monitored. Instead, they repeated the wild assertions that at least three KMPC newscasts a day were monitored from 1942 on. As is pointed out above, Mr. Burns was still making this assertion on December 4, 1950, despite his knowledge of all the evidence to the contrary (T. 16021).

212. These untrue assertions as to coverage of KMPC newscasts provide further examples of the deliberate deception and chicanery that characterized the conduct of applicants' counsel in every phase of this Radio Reports matter. Further, the incompleteness of the coverage shown by the foregoing provides further reason to question the competence of the Radio Reports material.

1/Latimer - 8 p.m. 3/31/46.

B. The complete failure to establish  
materiality of the Radio Reports  
material included in the Memorandum  
and in Applicants' Exhibit 271

213. As has heretofore been pointed out, counsel for the applicants has admitted the lack of materiality of the Radio Reports material which he sought to use in relation to the issues of the proceeding. Mr. Burns was pressed by the Examiner on this question of materiality. The Examiner asked him:

"What is there in your Schedule A of Exhibit 271 which, in your opinion, contradicts anything testified to by these 20 or more newscasters presented in behalf of the Commission last summer? Perhaps you could point that out to me, sir." (T. 15884)

Although he had just offered the exhibit in evidence, Mr. Burns said he was not prepared to discuss this question of materiality because Mr. Fulton was to argue that point later and Mr. Fulton was then in Washington. When the Examiner stated he was satisfied there was no materiality to Applicants' Exhibit 271, Mr. Burns indicated that the ruling should be held up until after oral argument on the Motion to Strike (T. 15872).

214. In oral argument (Mr. Fulton did not show up) Mr. Burns made some argument with reference to the competence of the Radio Reports material and argued generally its materiality but failed to show in what way a single item contradicted a single word of testimony of any Commission witness.

215. Nowhere in their Memorandum do applicants indicate what specific testimony of Commission witnesses they desire to have stricken. Nowhere have they attempted to relate the specific excerpts relied upon from Radio Reports material (Appl. Ex. 271), which allegedly contradicts our witnesses, to the specific testimony of any specific witness. Commission counsel repeatedly insisted upon such a specification but at no time have applicants' counsel complied. The reason was obvious. Any attempt to relate these excerpts to the specific testimony of Commission witnesses would have shown up the fact that the excerpts had no relationship whatsoever to any testimony of the particular witnesses and could not even in any remote way have served to contradict the testimony which is sought to be stricken.

216. An analysis of Schedules A, B, C, and D made part of applicants' Memorandum and sought to be introduced as an Exhibit by Mr. Burns will show its lack of materiality as well as the completely unfounded nature of the statement on page 5 of the Memorandum, to the effect that these excerpts "conclusively disprove" the testimony of Commission witnesses.

217. First, it is to be noted that the preponderance of the items selected for inclusion in Schedule A were from purported KMPC newscasts given on dates when Mr. Richards was out of town. This is, of course, significant in the light of the known refusal

of the newscasters to follow Mr. Richards' improper instructions when he was not in the Los Angeles area and could not order and control what was going out over his station.

218. Secondly, the preponderance of the selections are of non-Commission witnesses such as Hemingway and Nosbitt. . . .

219. One hundred thirty-two (132) selections from Radio Reports discs were included in Schedule A of Applicants' Exhibit 271, presumably to disprove statements of Commission witnesses concerning instructions relating to the following subjects:

1. Lilienthal
2. Democrats
3. Henry Wallace
4. Taft-Hartley Act
5. Anti-Semitism
6. Roosevelts
7. Hughes
8. Baruch
9. Editorials

220. Of the 132 selections, 78 were in the period when Mr. Richards was away from the Los Angeles area.<sup>1/</sup>

221. (1) Lilienthal. - Thirty-three (33) selections from newscasts relating to Lilienthal were included. Of these, 12 were from newscasts given on dates when Richards was in the Los Angeles area. Of these 12, only three purport to be newscasts of a Commission witness, namely, Eddie Lyon; a 4:00 P. M. newscast on April 3, 1947 (p. 73, Memorandum), a 4:00 P. M. newscast on April 9, 1947 (p. 74, Memorandum), and an 8:00 P. M. newscast for April 9, 1947 (p. 75, Memorandum).

222. The testimony of the Commission witnesses with respect to Lilienthal related to Mr. Richards' desire to defeat Lilienthal's confirmation to the Atomic Energy Commission and, therefore, he ordered that comment favorable to Lilienthal be played down and comment unfavorable to him played up. It was pointed out that newscasters ignored these instructions when Richards was out of town. (Sec. 4745-4746, 5319).

1/ By stipulation (T. 6215, 7553), it was agreed that Mr. Richards was away from the Los Angeles area during the following periods:

<u>1945</u>	<u>1947</u>
May 20 - June 24	Feb. 3 - March 4
Sept. 28 - Nov. 14	Apr. 11 - June 10
	Aug. 18 - Oct. 1
	Oct. 27 - Nov. 14
<u>1946</u>	<u>1948</u>
Apr. 22 - June 11	Mar. 10 - May 25
Aug. 19 - Sept. 12	Sept. 26 - Dec. 4
Nov. 6 - Dec. 30	

223. An examination of the three excerpts from purported newscasts of Commission witnesses given at times when Richards was in the Los Angeles area fails to show in what way any testimony by Lyon or any other Commission witness could possibly have been contradicted by these excerpts. The item of April 3, 1947 merely reported the refusal of the Senate to recommend the Lilienthal nomination to Committee. There is nothing in the item which is favorable to Lilienthal except the event itself. Indeed, for all that can be ascertained from this disc, it is not unlikely that there was considerable comment in the news on that day favorable to Lilienthal which may have been played down or deleted pursuant to Richards' instructions.

224. The items of April 9, 1947, are of substantially the same nature--reports of the final action of the Senate confirming Lilienthal's nomination. The event itself was, of course, favorable to Lilienthal but as in the previous case the station could hardly have failed to report it. Again for all that appears, considerable comment in the news favorable to Lilienthal may have been left out of these items. But, in any event, the purpose behind Mr. Richards' instructions, namely, to defeat Lilienthal's confirmation, had been made academic by the news event itself reporting the confirmation.

225. Applicants, at pages 27-28 of their Memorandum, make much of a statement made by Commission counsel to the effect that



nothing had been shown as to balancing of newscasts in respect of Lilienthal while Richards was in Los Angeles "because the newscrip<sup>t</sup>s of that strangely were not available". It is apparently suggested that the statement was incorrect in view of the fact that we had notesheets showing some newscasts on the Lilienthal events, and Radio Reports had discs for some purported KMPC newscasts. Despite the availability of some Radio Reports discs, which it has been shown in no way disprove testimony of Commission witnesses, it is entirely true that news scrip<sup>t</sup>s, which would very likely have shown deleted material favorable to Lilienthal when Richards was in town "strangely were not available".

226. Significantly in the 21-day period between March 10, 1947, the date Lilienthal's confirmation was reported favorably by the Senate Committee, and April 3, the date when a vote was taken on the Senate floor, a period when Richards was in Los Angeles, applicants have produced nothing from the notesheets 1/ concerning Lilienthal. The same significant absence of selections is true in the case of the period April 3, 1947, to April 9, 1947, the date when Lilienthal was finally confirmed by the Senate. This was also a period when Richards was in Los Angeles. Both periods were periods when the Lilienthal controversy was still very much alive and yet Counsel is able to show nothing from Radio Reports material in those periods. This is true not merely with respect to excerpts

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1/ There was one short disc item on March 31, 1947 purporting to be Norman Nesbitt's broadcast (Memorandum p. 73).

from discs but also with respect to the excerpts (Schedule B) reproduced on pages 149 to 170 of the Memorandum from the notesheets covering KMPC newscasts. Reference to page 162 of the Memorandum shows a wide gap in selections from notesheets between February 26, 1947, and April 23, 1947. A few days after February 26, 1947, namely, on March 4, 1947, Mr. Richards returned to Los Angeles, having been away for several weeks. He remained in Los Angeles until April 11 and on that day left Los Angeles. Not a single item from the notesheets has been selected by applicants' counsel for the period March 4, 1947, to April 11, 1947. And the only disc items selected during this period from purported newscasts of Commission witnesses were on April 3 and April 9, and these items merely report two important news events dealing with formal Senate action on the Lilienthal confirmation, events which even Mr. Richards could not possibly have successfully ordered suppressed from newscasts without attracting widespread attention to the omission.

227. In view of the foregoing, all of the assertions made by applicants' counsel (pages 26 to 32, Memorandum) with respect to this subject are gross distortions of the testimony of Commission witnesses and of the contentions of Commission counsel and they are also deliberately misleading and deceptive.

228. (2) Democrats. - Applicants' counsel selected ten items from Radio Reports discs which are listed under the heading "Democrats". Six of these purport to be from KMPC newscasts given on days when Mr. Richards was in Los Angeles. Only three of these purport to be from newscasts of Commission witnesses. Not a single one of these three items in any way contradicts or impeaches any testimony of these witnesses. Indeed, two of these items corroborate that testimony.

229. The first of these three items purports to be an 8 p.m. newscast of Bob Adams (Robert Horn) on September 22, 1946. It is beyond comprehension what there is in this newscast which contradicts any of Horn's testimony in any way. As a matter of fact, if anything, it supports rather than contradicts the instructions given by Richards, for it deals at great length with the appointment of a multi-millionaire as Secretary of Commerce in the Democratic Administration, and a specific reference is made to him in the newscasts as the "silver spooned son of one of the leading railroad and banking tycoons of the 19th century".<sup>1/</sup>

230. The second item, purporting to be an 8 a.m. newscast by Vance Graham, on November 2, 1946, is a perfect example of news

<sup>1/</sup> Compare Richards' own handwritten statement in a letter he wrote in February 1944 (FOG Enc. 52):

"Try always to get speakers of Lincoln type who came up the hard way and pour it on by comparing the inherited rich bastards no (sic) in saddle."

slanting which corroborates the testimony of Graham as well as other Commission witnesses. Right at the opening of the quotation from this disc, it appears that there was nothing in the news at that time about the Republicans' campaign efforts in the 1946 Congressional elections. But there is included the following gratuitous assertion:

"Apparently confident that the voters will follow the trends of the polls, the Republican leaders have been singularly confident in the past couple of days. However, the Democrats, fighting one of their toughest battles in more than a quarter of a decade, are keeping their campaign guns booming. . ."

Then follow statements as to speeches made or to be made by Democrats. But not a single word is included in the newscast as to what was said in the Democratic speeches.

231. The third item, purporting to be an item from Eddie Lyon's 4 p.m. newscast on April 10, 1947, is completely without significance in respect to any instructions from Richards testified to by Lyon. It merely deals with a statement by Senator Taft supporting President Truman's program to discourage Communism in the Middle East and brief quotation from a debate between the Democratic Senators, Connally and Pepper, on the subject of Russian aggression.

232. In view of the foregoing, the assertions made by applicants' counsel (pages 32 to 33, Memorandum) on this subject are deliberately misleading and deceptive.

233. (3) Henry Wallace. - Of the 20 selections on the subject of Henry Wallace, applicants' counsel selected only five during the time when Mr. Richards was in Los Angeles. None of these five purport to be broadcasts of Commission witnesses. As a matter of fact, even if these had been newscasts of Commission witnesses, there is not a single thing in any of them that contradicts their testimony in any respect. The assertions at pages 33 to 37 of the Memorandum on this subject are deliberately misleading and deceptive and grossly distort the testimony of Commission witnesses.

234. (4) Taft-Hartley Act. - Of the fourteen selections on the Taft-Hartley Act, only twelve were news programs and only six of these twelve were given during the time when Mr. Richards was in Los Angeles. But none of these ~~six~~ purport to be newscasts of Commission witnesses. Applicants' counsel disingenuously has included two programs (May 11 and June 22, 1947) which were obviously not newscasts but the Voice of Labor commentary programs sponsored by the American Federation of Labor on KMPC. One of these, the program of May 11, 1947 (p. 95) was given while Mr. Richards was away from Los Angeles. Also included is a commentary program (p. 106) of Fleetwood Lawton, their own witness, knowing full well that the scripts of all of his commentaries were available but never used by applicants' counsel. But applicants' counsel did not seek to introduce a single script of Lawton's

commentaries. The assertions at pages 37 to 40 in the Memorandum on this subject are deliberately misleading and deceptive.

235. (5) Anti-Semitism. - Of the twenty-five selections on the subject of Anti-Semitism, 14 were on days when Mr. Richards was in Los Angeles, of which only three purport to be broadcasts of Commission witnesses. One of these purports to be the commentary program of Cleto Roberts for June 26, 1947, and counsel knew that the scripts of all Roberts' commentaries were available. In any event, the item contradicts nothing Roberts testified to because he gave no testimony that he included a reference in his commentary to the Jewish nature of Bugsy Siegal's funeral.

236. The only purpose in including this selection from Roberts' commentaries could only have been to mislead and deceive the Examiner. For counsel stated at page 40 of their memorandum that "Roberts testified similarly" referring to testimony of Starrels, Lyon and Thor that they included in newscasts a reference to the Jewish funeral of Bugsy Siegal upon orders from Richards. Counsel referred to page 4292 to support their assertion that Roberts testified that he included such a reference in his commentary. There is no testimony by Roberts on page 4292 of the transcript. Perhaps counsel intended to refer to page 5293 at which point Roberts testified about the Bugsy Siegal incident;



"\* \* \* I remember noting that in the news a rather full story was done on Mr. Bugsy Siegal."

"\* \* \* he recently had been killed in an under-world conflict here. As a matter of fact, that particular broadcast, I think, was written by Maurie Starrels, and I believe was written on precise, explicit orders from Mr. Richards, according to what Mr. Starrels told me."

\* \* \* \*

"I remember something about the cemetery where he was buried. Whether or not it was a Hebrew ceremony or not, I cannot remember."

The foregoing is a perfect illustration of the practice, employed throughout applicants' Memorandum, of distortion of testimony of witnesses in order to tailor it in a manner which would make applicable a contention counsel desired to make concerning "suppression of evidence." Here is deception of the most reprehensible kind!

237. The deception was carried further. After referring to testimony of Starrels<sup>1/</sup>, Lyon, and Thor to the effect that they carried out Richards' orders regarding the Siegal funeral, applicants' counsel refer to several discs (pages 40-41, 123-126) by Nesbitt and by Hemingway, which contained no reference to the Jewish funeral of Siegal. How these discs disprove the fact that Starrels (a writer) wrote such a story and that Lyon and Thor broadcast such a story is beyond comprehension. For the fact that neither Nesbitt nor Hemingway said nothing about the Jewish funeral does not prove that Lyon and Thor said nothing about it! As shown

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<sup>1/</sup>It cannot be contended that Starrels wrote this particular newscast for Hemingway. Starrels did not so testify as to this incident. Moreover, Starrels testimony clearly shows that he only wrote for Hemingway occasionally (T. 3559).

by the notesheets from which applicants' counsel extracted excerpts (see pages 163-164), Radio Reports made no recordings of newscasts by Lyon or Thor in the period June 22-June 27, 1947 when the murder and funeral of Bugsy Siegal were in the news. 1/

238. Aside from the Clete Roberts item, the remaining two items purporting to be from newscasts of Commission witnesses are from newscasts of Vance Graham on January 15, 1947, at 6:00 P.M. and on January 30, 1947, at 2:00 P. M. Both of these items relate to the Ku Klux Klan. From applicants' own description of the testimony of Commission witnesses on this subject (pages 40-44, Memorandum), it is obvious that Graham gave no testimony concerning instructions by Richards relating to news about the Ku Klux Klan. Obviously, therefore, nothing in these items contradicts Graham or any other Commission witness. The only Commission witness whose testimony is cited by applicants on this subject is Horn. On the dates of the above two newscasts by Graham, as well as others in which the Ku Klux Klan was mentioned in excerpts of discs selected by applicants' counsel, Horn had been gone from KMPC for over two months. (T.6688)

239. All of the assertions made by applicants' counsel (pages 40-44, Memorandum) on the subject of Anti-Semitism are gross distortions of the testimony of Commission witnesses and of the contentions of Commission counsel and they are also deliberately misleading and deceptive.

1/ This is confirmed by Radio Reports own log (App. Ex. 258).

240. (6) The Roosevelts. - Of the five selections on the subject of the Roosevelts, only one (Hemingway, January 29, 1947, 8 P.M.; page 129, Memorandum) was on a day when Mr. Richards was in Los Angeles. This does not purport to be from a newscast of a Commission witness. The assertions made by applicants' counsel (pages 44-45) on this subject are deliberately misleading and deceptive.

241. (7) Howard Hughes. - Of the six selections on the subject of Howard Hughes, three were on days when Mr. Richards was in Los Angeles, of which only one purports to be from a newscast of a Commission witness. The newscast was that of Eddie Lyon on April 4, 1947, at 4 p.m. (page 132, Memorandum). The item, as is apparent from applicants' own description of the testimony of Commission witnesses (page 45, Memorandum) in no way impeaches or contradicts either Lyon or any other Commission witness. The item, consisting of less than five lines, and relating to Hughes' test flight of an experimental photo-reconnaissance plane, might very well have been an underplaying of news about Hughes which might more readily have been shown from the news script. Counsel can, therefore, hardly rely on this item as disproving or contradicting any testimony of either Roberts or Lyon on the subject of Hughes. Here again, the assertions made by applicants' counsel (pages 45-46, Memorandum) are deliberately misleading and deceptive.

242. (8) Bernard Baruch. - Of the five selections on the subject of Bernard Baruch, only one was given on a day when Mr. Richards was in Los Angeles. This purports to be from a newscast by Nesbitt (June 26, 1947, 6 PM) and, even if this item could be attributed to a Commission witness, there is absolutely nothing in it disproving or contradicting any Commission witness since it deals with a statement by Baruch accusing Russia of waging a cold war against the United States. Again the assertions on this subject are deliberately misleading and deceptive.

243. (9) Editorials<sup>1/</sup>. - Of the fourteen selections on the subject of the use of Editorials in the newscasts, six were on days when Mr. Richards was in Los Angeles, and only one purports to be from the newscast of a Commission witness, namely, a newscast by Robert Horn (Bob Adams) at 8 A.M. on October 5, 1946 (page 137, Memorandum). This was an item in which reference was made by Horn to an editorial in a trade journal called "Hide in Leather and Shoes."

244. Applicants state in regard to this excerpt: "This item alone demonstrated the falsity of Horn's testimony." This is the only instance in the whole Memorandum in which applicants attempt to relate the Radio Reports monitorings to the specific testimony of a Commission witness. Its use to support a contention that Horn's testimony was false is a complete distortion not only of Horn's testimony but of the item itself.

<sup>1/</sup>It has already been shown (supra, pages 83-89) how the items selected by applicants' counsel under this subject disprove rather than support their claims of suppression; and they corroborate rather than contradict the Commission's witnesses.

245. Horn had testified that on instructions from Richards he clipped out certain editorials from the newspaper and included them on his newscasts and that "no mention of the source of the editorials was made in his newscast."

The testimony continues:

"Q. Was there any reason why it was not given?

A. Well, I can't - yes, I can. It wasn't - after all, I was giving a newscast, Mr. Ford, not a commentary. Our news was presented as factual news. There was also another reason, that many of the editorials were appearing at that time from the Los Angeles Examiner, and I was doing newscasts for the Los Angeles Times.

Q. Let me see if I understand that. You mean that this was a Los Angeles Times sponsored newscast?

A. Yes, sir.

Q. And on that newscast Mr. Richards told you to use editorials from the Los Angeles Examiner?

A. He did.

Q. What if anything, did you do with respect to that?

A. I read Los Angeles Examiner editorials on Los Angeles Times newscasts.

Q. During that period of time was there a newscast in which editorials were read and labeled as such?

A. Not to my recollection." (T. 6702-6703)

246. It is apparent that Horn's testimony taken in context refers to his newscasts and to newspaper editorials read verbatim as news items. He specifically made reference to newspaper editorials, usually from the Los Angeles Examiner, used verbatim as a

news item in his newscast. The item relied upon is a partial and incomplete quote of an editorial in the trade publication "Hide in Leather and Shoes". It was obviously not the type of editorial Horn testified about. Here the editorial is not some newspaper writer's opinion on a controversial subject but is news itself similar to when a large paper such as the New York Times suddenly takes a position on its editorial page in support of a particular Presidential candidate. The editorial position of a paper such as the New York Times is in itself a news event. A fuller excerpt from the "Hide in Leather and Shoes" (Appendix G) shows that this editorial was the news event being reported by Horn. The leather industry through an editorial in its trade publication had come out with an appeal to black marketers who were illegally slaughtering cattle, to preserve the hides because of the critical shortage of leather. The reference to the fact that it was an editorial was to identify the "spokesman for the leather industry" who made the statement in the sentence preceding which was omitted by applicants' counsel. Moreover, it is most absurd to believe that this was the type of editorial which Horn was testifying that Richards selected and ordered newscasters to use. Counsel has not suggested that Mr. Richards was a subscriber to or a reader of the trade publication "Hide in Leather and Shoes" and, unless that was the fact, it is difficult to believe that he called Horn and told him to read



this editorial, telling him to be sure to identify it, as counsel apparently is contending. Richards was, as is apparent from the testimony of Horn and other witnesses, more interested in the editorial contained in newspapers whose political views coincided with his own. In the whole context of Horn's testimony, this is so clear that again the claim made by counsel in this instance is deliberate distortion and deception.

247. Applicants' counsel then goes on to give another partial quotation from the record in which Horn specifically states that on the Los Angeles Times newscasts there was an announcement stating "Here's To-Days Feature" in which some feature or editorial was read. Horn testified that he read the editorials so given without identifying them as such (T. 6809-6810). In an attempt to disprove this, applicants' counsel cites fourteen selections from Radio Reports monitorings in which an identification is made to editorial and other material in the KMPC newscasts. This disproves absolutely nothing for the following reasons: (1) None of these items were Horn's newscasts. (2) None were newscasts sponsored by the Los Angeles Times. (3) Horn did not testify that there were no editorials identified on KMPC newscasts. On the very page in the record (T. 6810) from which applicants' counsel obtained his quotation and continuing his testimony on the use of editorials, Horn said he had discussed the use of editorials with other newscasters:

"Q. (Burns) Don't you know that many of the newscasters did label the editorials as such when they broadcast them?

A. I imagine that was a point of personal choice in the matter."

Moreover, of the thirteen items cited, twelve were items from the 2 P.M. newscasts. Horn's duty assignment was from 6 A.M. to approximately 12 noon (T. 6773). The thirteenth item was the Reader's Digest item by Hemingway, previously discussed. The deliberateness of the deception employed by applicants' counsel in the selection of these items purportedly to contradict Horn and other Commission witnesses is further illustrated

by the fact that several of the fourteen editorial items listed by applicants' counsel were admittedly given on dates after Horn had left KMPC.<sup>1/</sup> As has already been pointed out, the fact that editorials were sometimes identified as such, does not disprove that Richards in some instances ordered editorials to be used without identification and that this was done. Nor does the fact that an editorial was featured and identified on a particular newscast program prove that editorials were not used on other programs without identification pursuant to orders from Richards. In view of the foregoing, all of the contentions made by applicants' counsel (pages 47-49, Memorandum) on the subject of Editorials, are gross distortions of the testimony of Commission witnesses and of the contentions of Commission counsel, and they are also deliberately misleading and deceptive.

1/The record shows that Horn was at KMPC until Nov. 15, 1946 (T. 6688).

248. It is unnecessary to discuss at any length the items in Schedule B of applicants' Exhibit 271 (pp 149-176, Memorandum). It is sufficient to point out that nothing can possibly be proven by such excerpts from notesheets for they merely represent the opinions of employees of Radio Reports as to the substance of items in newscasts monitored by them. Moreover, an examination of the items shows that the bulk of selections made by applicants' counsel are from newscasts given on days when Richards was out of town.

249. The record shows that during the period January 1, 1946 to October 1, 1947, Richards was away from the Los Angeles area a total of 258 days but was present in the Los Angeles area a total of 380 days. In view of this, it is significant that the selections made by applicants' counsel in Schedules A and B show far more items in periods when Richards was away from Los Angeles than items in periods when Richards was in Los Angeles.

250. The items in Schedules C and D of applicants' Memorandum, (pp. 171-185, Memorandum) all relate to the same incident and may be discussed together. The incident concerns testimony by a Commission witness, Thor, concerning a news item about a concert given by Margaret Truman in Pittsburgh.

251. In brief, Thor's testimony on this was that he had no conversations with Mr. Richards relative to the news item referred to (T. 4957). At the time he testified there was attached to the script

of his newscast for 6 A.M., October 18, 1947, a re-write item concerning Margaret Truman with a typed notation on the top "to be used on Saturday's newscast . . . Mr. Richards". (App.Ex. 111) In this script there was also a straight wire copy story on the same subject of Margaret Truman's concert performance. It was apparent that Thor used the wire copy story on his 6 A.M. newscast which not only gave the music critics' comments on Miss Truman's concert but also reported the warmth of the audience's reception. The language of the re-write item was not the same as that on the wire services that morning (T. 4958). Mr. Thor did not recall where he got this item but presumed he used it in his 6 A.M. newscast because it was attached to that newscast when shown to him on the witness stand (T. 4957).

252. It is clear from the record that there had been some disarrangement of the newsscripts from their original condition which had resulted in the transfer of this item from the script of the midnight newscast given on October 18, 1947 to the script of Thor's earlier newscast at 6 A.M. of the same day. Mr. E. Z. Dimitman, a journalist employed by the applicants to make a study of the newsscripts of KAPC, made an examination of the available scripts in the spring of 1948. Mr. Dimitman found this very item concerning Margaret Truman bearing the notation "to be used on Saturday's newscasts. . . Mr. Richards", in the script of a newscast

for midnight Saturday October 18, 1947 (T. 15265). Its presence in the last newscast of the day therefore clearly indicates that in conformity with the practice testified to by a number of newscasters it had been used on prior newscasts on that day and that it had been passed on from newscast to newscast pursuant to Mr. Richards' order contained in the notation on the top and that it ended up, as Dimitman found it, attached to the last newscast of the day at 12 midnight.

253. In their memorandum (pp. 22 and 23) applicants' counsel allege that Commission Counsel knew that this particular item concerning Margaret Truman did not get beyond the 6 A. M. newscast because "he [Mr. Cottone] had tucked away in the brown folder marked 'October 18, 1947', two notesheets on KMPC newscasts for that morning, the Lawton newscast for 7:30 A.M. and the Thor newscast for 8 A. M. The corresponding disk for each newscast was carefully attached to each notesheet. Transcriptions of these disks made by the applicants (Schedules D-1 and D-2) show that no Margaret Truman item was used on either of these newscasts closely following the one in which it was first used, and that the item did not in fact, therefore, 'get beyond' the 6 a.m. newscast." This allegation is made to support the contention that Mr. Cottone sought to prove (falsely) through Turner that the particular Margaret Truman item had been used on more than a single newscast and was used in Turner's

8 P.M. newscast when Mr. Cottone knew all the time, from the discs in his possession, that such was not the fact.

254. The flagrant deceit in these assertions of applicants' counsel is truly shocking! For applicants' counsel was fully aware of the Dimitman Report in which the statement was made by Dimitman (p. 38) that he had found the Margaret Truman item only in the 12 midnight news script.<sup>1/</sup> The deceit assumes monstrous proportions in the light of the fact that Mr. Cottone pointed out Dimitman's finding in the very next sentence of his statement which applicants deliberately failed to include on page 23 of their Memorandum. In complete dishonesty, applicants left out the most significant portion of Mr. Cottone's statement. In its entirety, the statement was as follows; with the portion not quoted by applicants' counsel underscored:

"Mr. Cottone: But he says, Mr. Examiner, you have to bear in mind that he said that because - - you will recall his answer was that it appears it didn't get beyond the 6:15 a.m. newscast.

Our point is that that cannot be taken as a fact. That cannot be taken as a fact, particularly in view of Mr. Dimitman's own assertion here that that particular item was found in the 12:00 midnight newscast on October 18 and the witness has answered that he didn't put it in his 8:00 p.m. newscast because he said it didn't get beyond the 6:00 a.m. newscast." (T. 12999)

1/ Applicants' counsel knew that at the time the Radio Reports material was obtained by the Commission in March 1949, the Dimitman Report had been filed with the Commission and, therefore, applicants' counsel knew that Commission counsel was aware, from that report, that the Margaret Truman rewrite item was then in the 12:00 midnight script.



Applicants' counsel could not have failed to know that the Margaret Truman re-write item might not have been carried on the Thor 6 A.M. newscast since Thor carried the wire copy item at that time as is shown in Applicants' Exhibit 111. They did know, however, that the re-write item had been carried on the 12 midnight newscast and that it must have been carried on several newscasts prior to the midnight newscast on that day with the strong likelihood, in view of Mr. Richards' order on the face of the item, that it was actually carried in Turner's 8 P.M. newscast as well as other newscasts. The applicants' counsel was fully aware of the fact that Radio Reports had not monitored a number of KMPC's newscasts on October 18, 1947. Applicants' counsel knew that it was entirely likely that Mr. Richards telephoned the newsroom after 8 A.M. on October 18, 1947, instructed the preparation of the Margaret Truman re-write item and directed repetition of the item on the newscasts of the rest of the day.<sup>1/</sup> Applicants' counsel, therefore, knew when they made the statements on pages 22-23 of their Memorandum that it was utterly without significance that the discs reproduced in Schedules D-1 and D-2 purportedly showed that the Margaret Truman item was not used in either the 7:30 A.M.

<sup>1/</sup> Although news scripts were allegedly available in this period, (being after September 29, 1947) at the time of the hearing only the 6 A. M. script was available out of several newscasts given over KMPC on October 18, 1947.

Lawton newscast<sup>1/</sup> or the 8 A. M. Thor newscast.

255. The remainder of their contentions with respect to this item are based upon a clear distortion of Commission counsel's contention with respect to this item. Applicants' counsel state at page 22 of their Memorandum that "The implication intended by this testimony was that the station broadcast unjustified criticism of Margaret Truman from a mysterious and possibly manufactured source". Using this manufactured contention as a foundation, applicants' counsel points out that in the same brown folder marked October 18, 1947, there were included notesheets showing that items criticising Margaret Truman had been carried on newscasts of two other stations in Los Angeles. Here again the notesheets relating to the two other stations were entirely without significance on this matter because the whole point of the testimony introduced by the Commission on this matter was the fact that Mr. Richards ordered repetition on the item throughout the newscasts for the reason that, as it was rewritten pursuant to his orders, the news event was slanted unfavorably to President Truman's daughter.

256. Applicants' counsel blandly ignored the fact, which is not refuted by any notesheets from any other station, that the

1/ What significance the non-use of the rewrite item by Lawton could possibly have is again beyond comprehension. For, Lawton did not deliver his 7:30 A.M. newscast from the KMPC newsroom as applicants' counsel well know (T. 9004).

language of the particular re-write item was not, as shown by the script itself, from the wire copy. It is obvious that the note-sheets of other stations do not refute the fact that this was another example where an item was rewritten upon Mr. Richards' dictation in the commentary vein in order to give greater emphasis to the comments critical of Miss Truman. A comparison of the wire copy item used by Thor at 6 A.M. with the re-write item ordered by Richards vividly shows this.<sup>1/</sup> The reference to "nine curtain calls" in the rewrite item was submerged as a parenthetical clause in an opening sentence stating that Margaret Truman "left the music critics cold". No such expression appeared in the wire copy. The wire copy gave a fuller account of the warmth of the audience's reception of Miss Truman. The only reference to the audience's reception in the rewrite item was in the parenthetical reference to the "nine curtain calls". The re-write item ended in the note: "Fred Lissfelt, of the Pittsburgh Sun-Telegraph - His Opinion: - 'In one word, childish'".

257. Applicants' counsel's assertions in regard to this incident are, therefore, grossly deceptive and are based on distortion of the testimony of witnesses and of the contentions of Commission counsel.

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<sup>1/</sup> See pages 105 to 106, Proposed Findings of the General Counsel.

CONCLUSION

258. In the light of the foregoing, it is respectfully requested that the Examiner refuse to reconsider his previous actions (1) denying the motion to strike and (2) striking applicants' accusations of "suppression, concealment and destruction" of evidence, and that he expunge from the record as sham and frivolous, scandalous and scurrilous, the "Memorandum in support of applicants' Motion to Strike from the record any and all evidence relating to newscasts alleged to have been broadcast over Radio Station KMPC between July, 1942 and September 29, 1947, and for other relief."

259. It is further respectfully requested that the "Motion to Strike" which the foregoing memorandum purports to support be dismissed for the same reasons.

Respectfully submitted,

Benedict P. Cottone  
General Counsel  
Federal Communications Commission

Frederick W. Ford  
Counsel

Thomas H. Donahue  
Counsel

APPENDIX A

AFFIDAVIT

STATE OF DELAWARE )  
COUNTY OF NEW CASTLE ) SS

Be it remembered that on this 7 day of March, 1951, presently came William Parker before me, the subscriber, a Notary Public in and for the State and County aforesaid and after first being duly sworn, did depose and say.

This is a statement to the Federal Communications Commission made by me, William Parker, of the Sunday Star, 309 Shipley Street, Wilmington, Delaware. The matters I am setting down hereafter are to the best of my recollection and without prejudice subject to minor changes in circumstances if certain documents or dates are placed before me. Basically, these circumstances are facts as I now recall them.

I have been a newspaper man twenty or more years, and on several occasions have been employed in radio stations as a news commentator or news editor. At the present time I am employed by the Sunday Star, published at 309 Shipley Street, Wilmington, Delaware. In my newspaper experience I have held executive positions such as general manager for one of Mr. Hearst's news agencies, and for approximately four years was chief correspondent for International News Service in Paris, France.

The following circumstances took place during the time I was a radio news commentator at radio station KMPC in Beverly Hills, California, which later was moved to Hollywood, California. This was

approximately a period of two and one-half years, from about the middle of 1943 to the Spring of 1945, as I recall it without specific dates before me.

On several occasions Mr. G. A. Richards of radio station KMPC suggested to me the interpolation in my radio commentaries of certain statements made by Mr. Fulton Lewis, Jr., a radio commentator, and Mr. Kaltenborn, and certain press releases issued by other individuals. On one occasion, when Mr. Richards suggested to me that I interpolate certain remarks made by Mr. Lewis I objected on the ground that I did not like to quote an individual unless I had textual matter before me. I suggested that perhaps I might do a "Commentary on commentators". The suggestions made by Mr. Richards regarding my including in my radio commentaries the remarks of other people were explained by him as being material which was anti-Franklin D. Roosevelt or anti- the Roosevelt Administration and anti-unions and anti-labor leaders, and particularly John L. Lewis, President of the Mine Workers Union. Mr. Richards explained to me that he desired to see the election of a Republican president of the United States. I suggested that perhaps material of the "type he desired" could be obtained from an organization bearing the name of Radio Reports, Inc., which had an office in Los Angeles, California. I told Mr. Richards that I might or might not be willing to undertake the commentary myself, but, if he had no objection, on my own behalf, I would talk with the Los Angeles representative of Radio Reports and see if some mutually satisfactory arrangement could be worked out whereby I would have free access to radio recordings which were monitored broadcasts made by Fulton Lewis, Jr., Mr. Kaltenborn, and others.



I had indicated to Mr. Richards that it should be advisable to have the actual recording rather than a written transcription of any such radio commentators. I explained to Mr. Richards that I had knowledge of such an organization as Radio Reports and that it made disc recordings and then supplied typewritten text, but that I myself would want an actual disc rather than a typewritten text. Mr. Richards indicated that he would like further information about what I had said about obtaining disc-recordings of commentators such as Fulton Lewis, Jr. and others and asked me to advise him of the result of my interview with the Radio Reports.

In furtherance of this I called upon a Miss Wilkenson, at the Office of Radio Reports, in the James Oviatt Building, in South Olive Street, Los Angeles, California. Miss Wilkenson told me she was Los Angeles manager for Radio Reports. I told Miss Wilkenson I myself might be interested personally in obtaining actual discs of commentaries by Fulton Lewis, Jr. and others and that I might broadcast a program over KMPC in the form of a "Commentary on Commentators". I suggested that we work out, if possible, some arrangement whereby I could obtain these discs without cost to myself, and that, further, it might be possible that I could obtain free rental for Radio Reports at radio station KMPC if in turn, I, together with KMPC, could be supplied with such discs free of cost. During our conversation Miss Wilkenson indicated to me that the office rental of Radio Reports was a primary problem, in that Radio Reports had not been able to develop any substantial monitored service in the Los

Angeles area. Miss Wilkenson indicated an interest in obtaining free space at KMPC, but said she would have to present it to the head of Radio Reports, the head of which was living in New York City.

The next time I saw Mr. Richards, which may have been a day or several days later, I told him the results of my interview with Miss Wilkenson. Mr. Richards, Mr. Reynolds, General Manager of KMPC, and I, looked about the radio station to see where we might find a place for Radio Reports. We all three came to the conclusion that such occupancy by Radio Reports would strain the already overcrowded facilities of the radio station. No definite statement was made by Mr. Richards or Mr. Reynolds that I should proceed with the matter or give any answer to Radio Reports. It appeared to Mr. Richards, Mr. Reynolds and myself, after looking over the studio and discussing the possibility, that there was insufficient room to provide space for Radio Reports. We let the matter rest at that point without any further discussion.

Miss Wilkenson communicated with me by letter, indicating, during this period, that she would like more definite information on free space at radio KMPC. I replied by letter that I had sent her letter to Mr. Richards, who at that time either was at his Beverly Hills home or at his ranch at Palm Springs. This communication, which I sent Mr. Richards, was passed along with other routine matters by messenger service between the radio station and wherever Mr. Richards was located. I wrote Miss Wilkenson to this effect and stated that Mr. Richards had phoned me after my broadcast and I had told him

about the commentary material that I had mentioned during the Radio Reports discussions. As I recall, he said he had turned the matter over to Mr. Reynolds, Manager of KMPC.

As I recall now, this was the conclusion of any talks carried on by me unofficially for KMPC with Radio Reports. I have no recollection that anything further was done.

I recall having attended a luncheon given at the Biltmore Hotel in Los Angeles, given by a Mr. Loomis, who was introduced to me by Miss Wilkenson as the head of Radio Reports. I have no recollection of having advised Mr. Richards or Mr. Reynolds in advance that I was to attend a luncheon given by Radio Reports. My invitation, as I recall, was that it was a luncheon primarily for radio commentators. I do not recall any conversation with Mr. Loomis regarding Radio Reports taking space at station KMPC, nor have I any knowledge that anyone else from KMPC who might have been present at the luncheon discussed the matter with Mr. Loomis. After the luncheon I returned to radio KMPC and on meeting Mr. Reynolds in the hallway told him where I had been and that my impression of a talk given by Mr. Loomis was rather "reactionary". Mr. Reynolds made no comment.

This information is submitted at the request of the Federal Communications Commission, whose representative came to Wilmington to see me.

/s/ William Parker

Sworn to and subscribed before me the day and year aforesaid.

/s/ Victor Collings  
Notary Public

My Commission expires 10/17/52

(SEAL)

APPENDIX B

To the Federal Communications Commission:

I was employed as news editor by radio station KMPC, Los Angeles (then located in Beverly Hills, Calif.) from approximately September, 1943 to February, 1944. Walter Carle and a girl whose name I can not recall at the moment, assisted me in the newsroom in preparing newscasts. The girl worked the evening shift, preparing 5-minute newscasts for use every hour. Carle succeeded me as news editor when I left the station.

Sometime during my employ I had occasion to discuss Radio Reports with the girl, with a commentator on the station, William Parker, and with Robert Reynolds, manager. I cannot recall the full details of these conversations. However, I do recall that with the girl it was casual, shop talk, a discussion of something new in radio. Parker and I went over a copy of the report, and vaguely I remember Parker remarking it might be a good idea for the station to try the service. I do not recall any further developments. With Reynolds, the conversation was also casual, taking place as I recall while we were driving from Los Angeles to Beverly Hills. As I recall I told him that somebody had set up a business of listening to radio, commentators in particular, and making a

digest of their remarks, and offering these reports for sale. I do not recall Reynolds' comments.

Shortly after I went to work for KMPC I had a telephone conversation with G. A. Richards, owner of the station, in which he told me, in substance, that I was to forget freedom of the press ideas which I had picked up in newspapers, that radio was different and had no obligation toward freedom of the press; that he owned KMPC and could broadcast anything he wished.

Mr. Reynolds told me that my major concern was to "keep the Los Angeles Times happy". (The Times was sponsor of our newscasts). Mr. Richards subsequently told me that KMPC was his station and he, not the Los Angeles Times would determine the content of the newscasts.

Occasionally Richards and I would disagree on what constituted news and what should be broadcast. In particular, we disagreed over the broadcast of material which appeared in the Los Angeles Examiner and which we did not have available through our own news services and for which we did not ask or receive permission to broadcast from The Examiner.

From time to time Richards would call me with instructions to include some specific item in newscasts.

Sometimes he would ask that a particular item be repeated on every hourly newscast for the rest of the day or for the next 24 hours. I do not recall any specific item.

I left the station voluntarily, for several reasons, among them was the fear that ultimately my standards of news judgment and public service as a newsman would be warped and destroyed.

Signed Virgil Smith

Subscribed and sworn to before me this 3rd day of February, 1951.

Ellen Tomlinsin

Notary public in and for Multnomah county, Oregon.  
My commission expires 5/9/52.



APPENDIX C

State of California     )  
County of Los Angeles   ) ss:

Clete Roberts being duly sworn deposes and says; that during the period of my employment at Radio Station KMPC in Los Angeles, California, which employment extended from December 1946 to February 1948, I was, on several occasions called on the telephone by individuals who represented themselves as employees of Radio Reports.

In virtually every instance the so identified individual, usually a woman, informed me that Radio Reports was monitoring my news commentary for one of its clients. The Radio Reports representative would then tell me their monitors had missed part of my broadcast and would request that I read the missed portion to them over the telephone. I did this on several occasions.

During the year 1947, at an exact date I cannot recall, a woman, identifying herself as an employee of Radio Reports, phoned me relative to comment I had made on either some action taken, or statement made by one of the great steel manufacturing organizations of the United States; a firm Radio Reports described as one of their clients. As usual, Radio Reports wanted me to read over the telephone the text of my comment. I did so, providing them with the information they desired.

On the day following the above mentioned telephone call I had occasion to meet with Mr. Robert O. Reynolds, Vice President and General Manager of KMPC. In the course of our meeting I informed Mr. Reynolds of the fact that Radio Reports had told me they were monitoring my evening broadcasts for one of their clients. Mr. Reynolds and I discussed the fact that the steel company, whose name I cannot recall, apparently was keenly interested in radio and press comment on the action they had taken, or the statement they had made.

I told Mr. Reynolds I was somewhat surprised to learn that Radio Reports was monitoring my broadcasts; that I was of the opinion they usually recorded only network programs; that I had the impression they, as a rule, wouldn't bother with an independent radio station.

Mr. Reynolds said he held the same general opinion of the activities of Radio Reports.

I have a distinct recollection of telling Mr. Reynolds that Radio Reports action in monitoring our broadcasts indicated they were probably doing the same thing all over the country. I further observed that such a monitoring service must entail a great expense to the steel company who hired Radio Reports to perform such a duty.

As I recall, Mr. Reynolds concurred in these observations. He also agreed that such action by Radio Reports might

indicate that KMPC's news broadcasts, even though we were not a network station, might be growing in importance insofar as the listening public in the Southern California area was concerned.

My purpose in calling the Radio Reports monitoring activities to Mr. Reynolds attention was to make the point that KMPC's news was apparently gaining wider public recognition.

/s/ Clete Roberts

Subscribed and sworn to before me  
this 2nd day of December, 1950

Archibald W. Hall  
Notary Public, County of Los Angeles, California

My Commission expires November 13, 1954.

APPENDIX D

State of California    ) ss  
County of Los Angeles )

Olive Evans Maillett, being duly sworn deposes and says:

I was employed at Radio Reports, Los Angeles, from December 1946, up to about the middle of November 1950. My work consisted of monitoring, transcribing and filing.

Beginning in 1948, I started telephoning stations in connection with my work and I believe I called all the stations which we monitored. I would call them for spelling of names and for portions of scripts that we would miss during a break-down of machines or otherwise or for broadcasts that were not taken by us. I must have, of course, called KMPC in this connection although I do not at this time recall any specific instances except that I remember specifically that in the latter part of 1949 or the early part of 1950 I spoke with Jim McCulla and KMPC to get a news story which had been broadcast when one of the machines was broken down. At that time I told McCulla that Radio Reports was requesting the information for one of the clients that was interested in obtaining it. McCulla said that he knew of Radio Reports and was very willing to give the information. He read the news item to me.

I also specifically recall calling with reference to the "Open Forum" broadcast but I do not at this time recall whether it was in connection with the program broadcast over KMPC or KLAC.

To my best recollection the first conversation between Mrs. Emily Timmons and Miss Lucille Jones, in which the fact that FCC had subpoenaed the discs, was brought out was in July or August of 1950. I fix this date because it was close to my vacation time,

and I recall specifically that it was either just before or just after my vacation time, at least within a week or two of it. My vacation was taken in the first two weeks of July 1950. I recall also that Mr. Frampton did not appear until approximately a month after Miss Jones called, and that it was approximately a month after Mr. Frampton called that Mrs. Timmons testified in court for the first time.

/s/ Olive Evans Maillet

Subscribed and sworn to before me this 4th day of April 1951.

/s/ H. J. Spore My Commission Expires April 15, 1953  
Notary Public in and for the County  
of Los Angeles, State of California

APPENDIX E

State of California     )  
County of Los Angeles   ) ss

Olive Evans Maillett, being duly sworn deposes and says:

I commenced working at Radio Reports in December 1946. It was located on Figueroa Street at that time. I was hired by Joe McDonald who was manager. I think that Mrs. Emily Timmons at that time was his secretary. McDonald left Radio Reports about February 1947. In the early period the following were employed at Radio Reports: Mrs. Timmons, Julia Dovey, Josephine McIntire, George Peckins and myself, and occasionally there was a part-time worker. In 1947 Les Gilbert and Joe Katzenberger were hired.

My best recollection is that we had three sound scribe machines in December 1946 and that this was increased to four either in the early part of '48 or latter part of '47. There were two radios at that time.

There was a robbery in the last part of January 1947 in which a radio and earphones were taken.

I have worked at Radio Reports since my original employment in 1946 up to about the middle of November 1950. My work has consisted of monitoring, transcribing and filing. I worked on the recent job that Radio Reports did for KMPC and participated in attempting to identify KMPC discs from the discs on hand at Radio Reports for 1946 and 1947. I also transcribed a good many of the 150 manuscripts requested by KMPC. There were 2 or 3 other transcribers.



At the time I came to Radio Reports they were using the system of notesheets and serial numbers on the records and sheets. The serial letter was also being used but was not placed on the records or the notesheets. No serial letters were put on until '47. However, the records were filed in small cartons holding approximately 50 records upon which the serial number was indicated. To my best recollection the "B" series started in the latter part of 1946.

Mrs. Timmons advised me in '46 or the early part of '47 that they were consuming about 300 records a week. A log on the wall scheduled the programs for monitoring and special programs, and this was followed, except where there were special orders or break down of machines. The scheduling was changed from time to time and was designed to fit the number of machines available. Broadcasts considered the least important from the standpoint of Radio Reports were eliminated. The standard for determination was whether or not the manuscripts were saleable. To my best recollection the following KMPC programs were being taken during the period '46 to '47 during my shift which was from 3:30 p.m. to midnight:

- News at 4:00 Eddie Lyon or Ralph Turner or others
- News at 6:00 (Clete Roberts)
- News at 8:00 Hemingway
- Bob Kelly's Sport Show
- "Land of Free", taken regularly once a week
- "Voice of Labor", a commercial program sponsored weekly by a labor group taken regularly and
- "Open Forum" on Sunday nights, taken regularly.

My memory as to what KMPC programs were taken in '46 and '47 may have been refreshed by my recent work in attempting to identify KMPC programs out of the group of records on hand at Radio Reports.

Beginning in 1948, I started calling stations in connection with my work and I believe called all the stations which we monitored. I would call them for spelling of names and for portions of scripts that we would miss during breakdown or otherwise or for broadcasts that were not taken by us. I must have, of course, called KMPC in this connection, although I do not at this time recall any specific instances except that I remember specifically that in the latter part of 1949 or the early part of 1950 I spoke to Jim McCulla at KMPC to get a news story which had been broadcast when one of the machines were broken down. At that time I told McCulla that Radio Reports was requesting the information for one of the clients that was interested in obtaining it. McCulla said he knew of Radio Reports and was very willing to give the information. He read the news item to me.

I also specifically recall calling with reference to the "Open Forum" broadcast but I do not at this time recall whether it was in connection with the program broadcast over KMPC or KILAC.

Radio Reports moved from Figueroa to 6th Street on May 30, 1949, and I believe that some notesheets may have been destroyed at that time, rather than moving them to the new location, and I am not sure whether any were destroyed before that time.

I believe that additional notesheets were destroyed several months after the move, it may have been six or eight months, and I think that old ones were selected up to '47 but I do not know this for certain. They may have been prior to '49. The last time that I can recall specifically that notesheets were destroyed was the occasion recited above, that is several months after the move.

In May 1950, a box of discs was shipped to Berkeley but I do not recall whether any notesheets were destroyed at that time.

Shortly after the move on May 30, 1949, within perhaps one or two months later, we started the resurfacing of the discs and this was done in a haphazard manner, taking whatever discs were most convenient. At this time we did not have in mind the instructions from the Federal Communications Commission or the New York office to keep the discs. However, at the time that the New York office had sent the letter stating that we were to keep the KMPC discs after 1947, the matter was discussed generally in the office and we all were aware that we should keep the discs. I can't explain why they were resurfaced in view of these instructions.

At the time the letter was received from New York, Mrs. Timmons expressed concern about keeping them for the FCC. She said she thought they might be needed and that Radio Reports wouldn't have them and they ought to be kept.

At the time of the subpoena of the records there were general discussions in the office regarding the fact that KMPC would like to have the discs but I do not know of any contact that was made with them regarding it.

I was not informed that Mr. Reynolds had called in April of 1950 and was not aware of it until I learned of it in December of 1950.

I know of no particular reason why the specific 6500 discs remain for '46 and '47. As far as I know, there was no method of selection from them in resurfacing.

Although the discs were not marked as to serial letters, they could be identified as being either "A" or "B" depending upon what carton they came out of. However, there were many discs that were not in cartons at all and consequently A's and B's were mixed.

The resurfacing was handled in the following manner: We rented the resurfacing machine on three different occasions for a week at a time and we did the resurfacing along with our regular work. We did not do as much in the subsequent weeks as we had done on the first week when we had resurfaced approximately 3800 discs. In one of these periods we did very little resurfacing because there was a tremendous rush of other work at that time.

I have no way of estimating how many discs were resurfacing for a period prior to '46 or '47 or how many were resurfaced for the period of 1946 and 1947 but I do not think a great many of the 1946 and 1947 but I do not think a great many of the 1946-1947 discs were resurfaced as I will explain.

I have examined the lists that were prepared of the approximately 1100 KMPC broadcasts that were identified from the 6500 discs for 1946-1947. Radio Reports has an additional 50 to 100 discs in an "uncertain" category and I am told that the FCC has an additional two to three hundred discs for the '46-'47 period. This could possibly represent a maximum of up to 600 KMPC broadcasts. In addition, I know that a number of Sid Fuller and Fleetwood Lawton broadcasts over KMPC were not included in the list but were placed in the "Not KMPC" box by error. Based on the above tabulation and count and my examination of the lists and in view of the sequence

of serial numbers and the frequency cycle of appearance of the various shows and personalities on the lists, it is my best estimate that approximately all of the records made during the period '46- '47 have been preserved, and that very few such records have been resurfaced. In my judgment nearly all of the recordings of KMPC broadcasts during 1946-1947 seem to be accounted for.

To my best recollection, the first conversation between Mrs. Timmons and Miss Lucille Jones, in which the fact that FCC had subpoenaed the discs was brought out, was in July or August of 1950. I fix this date because it was close to my vacation time and I recall specifically that it was either just before or just after my vacation, at least within a week or two of it. My vacation was taken in the first two weeks of July 1950. I recall also that Mr. Frampton did not appear until approximately a month after Miss Jones called and that it was approximately a month after Mr. Frampton called that Mrs. Timmons testified in court for the first time.

At the time of the order by the Fred Eldean Organization for all station radio coverage of the KMPC hearing, we didn't know for whom it was being covered but there was speculation in the office that it was either KMPC or FCC. In any event it was considered a wonderful order. After about three or four days, however, we were told that they were not interested in those coming over KMPC. We then got the inkling that it was KMPC that wanted the coverage of the hearings and for whom we were doing the work. I am not certain from where the order came for not covering KMPC, and it may have been in a wire but this is only an assumption.



As stated above, although the discs were not marked as to serial letter we could identify the letter from the cartons in which they had been kept. However, this did not apply to the mixed "A" and "B" discs where we had to exercise a judgment.

At first we were unable to identify a great many of the broadcasts but then as we became acquainted with the voices and programs we were able to identify a great many more of them.

Identification was based on a correlation of the newscaster, the sponsor and the time of day. In some instances, of course, the disc itself contained an indication of the station. Dates were recognized by reference to holidays and news events. Some commentators were on a number of different stations, for example Hemingway was on three different stations but we were quite certain that by correlating with the sponsor and time of day that we could segregate the ones that were on KMPC.

We did not correlate the discs with the notesheets either for the first four months of 1946, which we had or for any period and we did not check one against the other.

The box of, approximately 5500 which remained as those "Not KMPC" broadcasts did actually contain some KMPC broadcasts for the following reason:

At the time we were listening to the records and segregating then we were under the impression that Sid Fuller was on KHJ and we placed those discs in the box marked "Not KMPC". Later we discovered that Sid Fuller was actually on KMPC. The discs were not retrieved because it would have meant going through the whole



5500 again to identify the Fuller discs. The same thing happened with some of Fleetwood Lawton's broadcasts. For a while they were placed in "Not KMPC" box and have not been retrieved. I do not believe that Mrs. Timmons knew the above information.

We kept notebooks on the identification process from which the final lists were typed. The notebooks indicate identifying information. Those records which we were uncertain of, were re-played and others listened for purpose of identification. A number of the older monitors were brought in for the purpose of assisting in this work. A number of discs still remain in doubt, that is they cannot be classified definitely "Not KMPC" and yet we are not certain that they are KMPC.

We did not attempt to identify 1948 KMPC broadcasts except for the first month or so.

We found the notesheets for the first four months of 1946 quite by accident. They were in the drawer that had been stuck in the file cabinet and while searching for something else we came across these notesheets.

I saw Joe Katzenberger of the San Francisco office in November 1950 and he advised me that the box of 1948 discs shipped to him had not yet been opened and that none of them had been resurfaced.

I have carefully read the above statements and they are true and correct.

/s/ Olive Evans Maillet

Subscribed and sworn to before me this 4th day of April 1951.

/s/ H.J. Spore My Commission expires April 15, 1953  
Notary Public in and for the County  
of Los Angeles, State of California

APPENDIX F

FCC Ex. 451

KMPC PROGRAMS MONITORED SUMMER THROUGH FALL 1946

Monday through Friday

Business News	8:15 A.M.
Morning Sports Review	8:30 A.M.
Home Chats	10:45 A.M.
Norman Nesbitt	12:15 P.M.
Bob Kelloy	6:15 P.M.

Saturday

News	8:00 A.M.
Business News	8:15 A.M.
News-Sports Review	8:30 A.M.
Home Chats	10:45 A.M.
Auto News	12:15 P.M.

Sunday

Mayor Bowron	6:45 P.M.
Frank Hemingway	8:00 P.M.
Land of the Free	8:15 P.M.

APPENDIX G

Horn - 8:00 A.M. - 10/5/46 - Sponsored by Broadway Store

(Middle Commercial)" Now again - Bob Adams.

"The Agriculture Department has urged an increase in pig production next spring as the only means of averting a meat shortage in 1947. Farmers have been asked to raise 58,000,000 pigs. That goal represents an increase of 13% over last spring's production. The Agriculture Department also predicts that smaller lamb and mutton supplies for 1947 and 1948 will be available. Production of beef and veal is expected to increase next year but fall again in 1948. Meanwhile the meat shortage remains one of the nation's biggest headaches. Some government officials believe that there is no sense in keeping meat ceilings as long as such substitutes as eggs, butter, cheese and poultry remain uncontrolled and bring record prices. The OPA says ceilings on such meat substitutes in restaurants will be raised soon and the restaurant industry, not satisfied with 15% increase on meat ceilings is going ahead with plans to petition the Administration for immediate decontrol of all restaurant prices.

"Meanwhile, in Chicago, a spokesman for the shoe and leather industry has appealed publicly to black market slaughterers, asking them to be more careful in skinning the animals they butcher. The appeal is contained in a trade publication, "Hide in Leather and Shoes". The editorial, written by William

Rossie, says there is a desperate shortage of shoe leather, and it claims regular leather supplies have been cut off during the meat shortage. Many hides, which could be salvaged from the black market, have been destroyed or so badly mutilated they afforded poor quality leather. The editorial went on to say, "We are naive enough to believe that even black marketers have a remaining flicker of patriotism and compassion to which we can appeal." It continues, 'We say this, not with any intention of purchasing your illicit hides, of course, but merely because we wince at the thought of wasted hides in the face of today's rock bottom inventories."

AFFIDAVIT OF SERVICE

CITY OF WASHINGTON        )  
                                  )   ss:  
DISTRICT OF COLUMBIA    )

FLORENCE I. STRETCH, being first duly sworn, upon her oath deposes and says that she has this 14th day of May, 1951, sent by regular United States mail, U. S. Government Frank, a copy of the foregoing "Motion of the General Counsel to Expunge as Scandalous, Scurrilous, Sham and Frivolous the 'Memorandum in Support of Applicants' Motion to Strike from the Record any and all Evidence Relating to Newscasts alleged to have been Broadcast over Radio Station KMPC between July 1942 and September 29, 1947, and for Other Relief" to the following:

Fulton, Walter and Halley, Esquires  
30 Rockefeller Plaza  
New York 20, N. Y.

Kirkland, Fleming, Green, Martin & Ellis, Esquires  
National Press Building  
Washington, D. C.

Dow, Lohnes & Albertson, Esquires  
Munsey Building  
Washington, D. C.

Wheeler & Wheeler  
Southern Building  
Washington, D. C.

\_\_\_\_\_  
FLORENCE I. STRETCH

Subscribed and sworn to before me  
this 14th day of May, 1951.

\_\_\_\_\_  
FOREST L. McCLENNING  
NOTARY PUBLIC, D. C.

My Commission Expires January 15, 1953











070.46 U.S. F.C.C.

Un3m Motion of the  
general counsel to  
expunge....

4-2-56

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